128-489

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~330.~~ 67

HENRY R. DENNY, PLAINTIFF IN ERROR,

vs.

CHARLES C. BENNETT, AS ASSIGNEE OF A. B. VAN NORMAN & BRO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED OCTOBER 3, 1885.

As justly remarked by the supreme court of Colorado, it is a case where it is "attempted to appropriate the fruits of the mine-owner's improvements and expenditures on the plea of forfeiture by proving their annual labor for a single year to be of less value than one hundred dollars" (p. 135). Such an attempt as that disclosed by the present record can hardly fail, we think, to meet the prompt and unqualified condemnation of this Court.

GEORGE A. KING,
Attorney for Defendants in Error.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Minnesota, Greeting:

Because that in the records and process, and also in the rendition of judgment, of a plea which is in the said court of Minnesota, you, or some of you, being the highest court of the said State in which a decision could be had in the said cause, between Charles C. Bennett as assignee of A. B. Van Norman & Bro., as plaintiffs, and Henry R. Denny, as defendant, wherein was drawn in question the validity of a statute of the State of Minnesota, on the ground that the same was repugnant to the laws of the United States, and said supreme court of Minnesota has rendered a judgment in favor of the validity thereof; also wherein is drawn in question an authority exercised under the laws of the United States and the decision of said supreme court of Minnesota is against the validity of such authority, a manifest error hath happened to the great damage of the said Henry R. Denny, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice be done to the party aforesaid in this behalf, do command, if judgment be therein given, that then, under your seal, distinctly and openly, you send the proceeding and records aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

1½ Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 18th day of July, in the year of our Lord one thousand eight hundred and eighty-five.

[U. S. Circuit Court Seal, Dist. of Minnesota.]

OSCAR B. HILLIS,
Clerk of U. S. Circuit Court for the District of Minnesota.

[Endorsed:] State of Minnesota. Supreme Court. Sam. H. Nichols, clerk of supreme court, State of Minnesota.

2 STATE OF MINNESOTA SUPREME COURT, *ss:*

The answer of the judges of the supreme court, State of Minnesota, in the within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States of America, within mentioned, in a certain schedule to this writ annexed and marked "A," as within it is commanded.

Witness the Hon. James Gilfillan, chief justice of the supreme court of the State of Minnesota, at Saint Paul, in the State of Minnesota, this eighteenth day of September, in the year of our
3 Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth year.

SAM. H. NICHOLS,
Clerk of the Supreme Court, Minnesota.

(Endorsed:) Chas. C. Bennett, assignee, &c., *vs.* H. R. Denny. Writ of error. C. D. O'Brien, att'y for p'ff in error.

4 *Amended Complaint.*

STATE OF MINNESOTA, *County of Ramsey:*

District Court, Second Judical District.

CHARLES C. BENNETT as Assignnee of AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners as Van Norman and Brother, Plaintiff's,

vs.

H. R. DENNY, Defendant.

Now comes the above-named plaintiff, leave of court first having been obtained, and files and serves this his amended complaint, and for cause of action against the above named defendant, alleges and shows to the court:

That Axel B. Van Norman and Gustave Van Norman, co-
5 partners as Van Norman and Brothers, of the city of Minneapolis, Hennepin county, and State of Minnesota, being indebted to divers persons in considerable sums of money and being unable to pay their debts as they matured, and all of their property-rights and interest hereinafter described, and of which they were the sole and exclusive owners and in possession, having been attached, levied upon, seized and taken possession of by John Peterson, deputy sheriff of said Hennepin county, on the 31st day of December A. D. 1883, under and by virtue of a writ of attachment regularly issued out of the district court of said Hennepin county, in favor of one J. H. Purdy, doing business as J. H. Purdy & Co., and against the said Axel B. Van Norman and Gustave Van Norman, co-partners as Van Norman and Brother, upon a good, valid, subsisting, and unpaid claim then due and owing the said J. H. Purdy, doing business as J. H. Purdy & Co., from the said Axel B. Van Norman and Gustave Van Norman, copartners as Van Norman and Brother, did, in accordance with and under and by virtue of the provisions of section one (1), chapter one hundred and forty-eight (148), of the general laws of 1881, of said State of Minnesota, and for a good and valid consideration, on the said 31st day of December, A. D. 1883, duly grant, bargain, sell, convey, assign, transfer and set over, by an instrument in writing, all of the property of the said Axel B. Van Norman and Gustave Van Norman, copartners as Van Norman and Brother, except such as is exempt from levy

and sale on execution to this plaintiff for the equal benefit of
6 all their creditors in proportion to their respective valid claims who should file releases of their debts against the said Axel B. Van Norman and Gustave Van Norman, copartners as Van Norman and Brother, and as provided by law.

That said plaintiff duly accepted said trust by an instrument in writing on the said 31st day of December, 1883, and that said assignment so regularly and duly made and executed by the said Axel B. Van Norman and Gustave Van Norman, copartners as aforesaid, and the acceptance of said trust in writing by said plaintiff was regularly filed in the office of the clerk of the district court of said Hennepin county and State aforesaid, on the said 31st day of December, A. D. 1883. That on the said 31st day of December, 1883, said plaintiff duly qualified as such assignee by giving a good and sufficient bond in the sum of eighteen thousand dollars to the State of Minnesota, as provided by law, which said bond was duly approved by Hon. A. H. Young, one of the judges of said district court in and for said Hennepin county and State aforesaid, on the said 31st day of December, A. D. 1883, and the same was duly filed in the office of the clerk of said district court for said Hennepin county, on the 22d day of January, 1884, and that said plaintiff was on the said 31st day of December, 1883, ever since has been, and still is, the duly appointed, qualified, acting and legal assignee, of the said Axel B. Van Norman and Gustave Van Norman, copartners as Van Norman and Brother, as before alleged.

7 That plaintiff, as such duly-selected, appointed, legal, and qualified assignee, immediately entered upon the discharge of his duties as such, and on the said 31st day of December, A. D. 1883, took actual possession of all of that certain stock of jewelry of every kind and description, gold and silver watches, clocks, silverware, diamonds, and all the furniture and fixtures of every kind, including one large safe; then situate and being in the store number 419 Nicollet avenue, in said city of Minneapolis, Hennepin county, and State aforesaid, together with the said store, all of which said above described property was at the time of the making, execution, and delivery of said assignment by the said Axel B. Van Norman and Gustave Van Norman, co-partners as before alleged, under the name of Van Norman and Brother, on the said 31st day of December, 1883, the sole and exclusive property of the said firm of Van Norman and Brother, composed as aforesaid, and all of which said property was duly conveyed and assigned by the said Axel B. Van Norman and Gustave Van Norman, copartners as Van Norman and Brother, by their said assignment to this plaintiff so, as aforesaid, duly made, executed, delivered, and filed in the office of the clerk of the district court, within and for said Hennepin county and State aforesaid, on the said 31st day of December, 1883.

And plaintiff alleges that while he was in the lawful, peaceable, and actual possession of the store known as Number 419 Nicollet avenue, in the said city of Minneapolis, together with all of
8 the stock of jewelry of every kind, name, and description, as also all of the furniture and fixtures, including one large safe

then situate and being in said store on the 31st day of December, A. D. 1883, and so as aforesaid duly bargained, conveyed, sold, assigned and transferred by the said Axel B. Van Norman and Gustave Van Norman, copartners as aforesaid in the name of Van Norman & Brother, said plaintiff then and there being the sole and exclusive owner of all said property so as aforesaid duly conveyed and assigned to him, said defendant unlawfully and wrongfully seized and took from this plaintiff (then in the sole and exclusive possession of the same,) all of the above described property situate as aforesaid, against the protest and objection of this plaintiff, and illegally and wrongfully ejected this plaintiff with force and violence from said store, (then in sole and complete possession of the same,) and unjustly and wrongfully deprived him (plaintiff) of the control and possession of all said property and said store, and has unlawfully and wrongfully converted all of said property to his own use, and still unlawfully and wrongfully holds the same.

And plaintiff further alleges that the property so unlawfully and wrongfully seized, taken possession of and converted to his own use by said defendant, was on the 31st day of December, A. D. 1883, and at the time of its said unlawful conversion, of the reasonable value of ten thousand dollars, and that a demand in writing was made upon said defendant by the plaintiff for the immediate sur-
9 render and return of all said property so as aforesaid unlawfully seized and taken poseession of, to this plaintiff, on the 2d day of January, 1884, but that defendant neglects and still refuses to surrender and deliver up said property, or any part or portion of it, to this plaintiff, all to the damage and injury of said plaintiff in the sum of ten thousand dollars.

Wherefore, said plaintiff demands judgment against said defendant for the sum of ten thousand dollars, and interest on the same since the said 31st day of December, 1883, at the rate of 7 per cent. per annum with the costs and disbursements of this action.

MERRICK & MERRICK,
Plaintiff's Attorneys.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Charles C. Bennett came before me personally, and first being sworn, doth say that he is the plaintiff in the above entitled action, that he has heard read the foregoing complaint and knows the contents thereof, and that the same are true of his own knowledge except as to those matters stated on information and belief, and as to those, he believes it to be true.

CHARLES C. BENNETT.

10 Subscribed and sworn to before me this 8th day of May, A. D., 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public Hennepin County, Minnesota.

(Endorsed:) Filed September 15, 1884. R. W. Bell, clerk.

STATE OF MINNESOTA, *County of Ramsey:*

District Court, Second Judicial District.

CHARLES C. BENNETT, as Assignee of Axel B. Van Norman and Gustave Van Norman, Copartners as Van Norman & Brother, Plaintiffs.

vs.

H. R. DENNY, Defendant.

The defendant above named, for his answer to the amended complaint of the plaintiff herein, denies each and every allegation in said complaint contained and each and every part thereof,
11 and denies that plaintiff is or ever was the duly constituted assignee of the said Axel B. Van Norman and Gustave Van Norman, copartners as Van Norman & Brother, or of either of of them, or the assignee of said copartnership, or that he is or ever was the owner of any property mentioned or described in the complaint in the manner or form as stated in the complaint or in any other way, or that he is or ever was entitled to the possession of the same or to any part of the same.

And further answering, the defendant denies that he has any knowledge or information sufficient to enable him to form a belief as to any of the matters stated in the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, and 14th folios of said complaint and therefore denies the same and all of the same, and particularly denies that the said plaintiff was ever at any time in possession of any — said property described in said complaint, and he denies that the property described in the complaint is or ever was of the value of $10,000, or of any or greater value than $3,500. And he denies that by any act or doing of this defendant said plaintiff has been damaged in the in the sum of $10,000, or in any sum whatever.

And further answering, the defendant alleges that during all of the times stated in the complaint and for more than one year last past he has been and still is the marshal of the United States for the district of Minnesota, duly appointed, qualified, and acting as such; that heretofore, to wit, between the 8th day of September, 1883, and the 18th day of December, 1883, Peter Lapp and
12 Lem. W. Flershem, who were then and there copartners doing business under the firm name and style of Lapp & Flershem, and who were then and there each of them residents and citizens of the State of Illinois, at the city of Chicago, in the State of Illinois, at the special instance and request of the said Axel B. Van Norman and Gustave Van Norman, who were then and there residents and citizens of the State of Minnesota, and who were then and there copartners doing business under the firm name and style of Van Norman & Brother, sold and delivered to the said Van Normans as such copartners, goods, wares and merchandise, to wit: A large quantity of jewelery, which was then and there of the value of and reasonably worth the sum of $4,025.70, and which said sum the said defendants at said city of Chicago, promised and agreed to pay therefor.

That upon the 31st day of December, 1883, the said sum of money was due and payable from said Van Normans to the said Lapp & Flershem, and that the same was then and there unpaid, although payment thereof had been first demanded by the said Lapp & Flershem of the said Van Normans. That thereupon on the said 31st day of December, the said Lapp & Flershem, as such copartners, duly commenced in the United States circuit court for the district of Minnesota, (which said court was then and there a court of general jurisdiction of the United States, and which said court had, then and there, full jurisdiction of the persons of said parties and of the subject matter of said action,) an action against the
13 said A. B. Van Norman and Gustave Van Norman, copartners as aforesaid, to recover said sum of money. That thereupon such other proceedings were duly had in said action that a writ of attachment was duly issued by said court, together with a summons in said action, against said Van Normans, copartners as aforesaid, and that in and by said writ of attachment this defendant was, as such marshal, duly commanded to levy upon and seize the property of the said Van Normans, copartners as aforesaid, if the same should be found within his district, sufficient in amount to satisfy said demand of said plaintiffs, together with their costs and disbursements therein, and to safely keep and hold said property, when so seized by him, under said writ of attachment, until the further order of the said United States circuit court. That thereupon, in obedience to the mandate of said writ, this defendant, on said 31st day of December, 1883, did duly levy upon and seize under said writ, certain articles of jewelry and merchandise which were then and there the property of the said Van Normans, copartners as aforesaid, and which was then and there of the aggregate value of $3,500, and no more. That said action has ever since been, and is now, duly pending in the said circuit court of the United States, and that said writ of attachment is still in full force and effect, and has not been in any way modified or vacated, and that under and by virtue of said writ of attachment, this defendant duly holds and keeps all and singular said property so seized by him as afore-
14 said. That at the time of the levy upon and seizure of said property by this defendant, the same and all of the same were the goods and property of the said Van Normans, and were in their possession at the city of Minneapolis, and that none of the same were in the possession of the said plaintiff, nor had he any right, title or interest in the same or any of the same.

And the said defendant further avers that he never seized or took, either under said writ of attachment or otherwise, the said safe mentioned in the complaint herein, or any other or different property than is contained in his inventory and return to said writ of attachment, to which reference is hereby made for greater safety.

And this defendant further alleges that he holds said property so seized by him as such marshal of the United States in obedience to the mandate of said writ of attachment, and that the same is in the custody of the circuit court of the United States, under the mandate of said writ and in obedience to its precepts in that regard,

and he denies that he has ever, at any time or place, converted the said property or any of the same to his own use.

And the defendant further alleges that after said writ of attachment had been duly levied upon said property, and after the same was in the possession of this defendant under said writ, the said Axel B. Van Norman and Gustave Van Norman, copartners aforesaid, duly appeared in said action in the circuit court of the United States, and thereafter moved the court to dissolve, vacate, and
15 set aside said writ of attachment, and thereafter such proceedings were duly had in said court, that the same came on for argument and was duly heard upon the merits, and was thereafter by said circuit court of the United States duly denied, which said judgment is in full force and has never been appealed from or modified.

And defendant further alleges that thereafter the said plaintiff herein duly appeared in said action in said circuit court of the United States and sought to intervene therein, and thereupon, with leave of said court, duly moved to set aside, vacate, and discharge said writ of attachment, and to obtain the order of the said circuit court of the United States that said property be delivered to him; that thereafter said motion duly came on to be heard in the said circuit court of the United States upon its merits, and, after hearing and argument, was by the said circuit court of the United States duly denied, which said judgment still remains in full force and effect, and has never been in anywise modified, altered, or appealed from.

And defendant further alleges that in and by said proceedings so duly had in said cause as aforesaid, both of the said Van Normans and the said plaintiff herein duly appeared in said action and submitted themselves to the jurisdiction of the said circuit court of the United States, and that said appearance has never been withdrawn, and that said action on the part of said Lapp & Flershem
16 against the said Van Normans, together with said writ of attachment and the proceedings duly had thereunder, and all and singular said proceedings, are still duly depending in the said circuit court of the United States and have not yet terminated, and that said Van Normans and the said plaintiff are still the parties thereto, and that all and singular said proceedings had been duly commenced and were duly depending in the said circuit court of the United States, in manner and form as aforesaid, long prior to the commencement of this action.

And the said defendant further alleges that the said Bennett, the plaintiff herein, is not now and never was a freeholder of the State of Minnesota.

Wherefore, defendant demands judgment that the plaintiff take nothing by this action, and for his costs and disbursements herein.

O'BRIEN & WILSON,
Defendants' Attorneys, St. Paul, Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

C. D. O'Brien came before me personally, and being duly sworn, doth say that he one of defendant's attorneys in the above entitled action; that the foregoing pleading is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said defendant, is that he is
17 absent from the county of Ramsey and district of Minnesota, wherein resides affiant and all of his attorneys, and further saith not.

C. D. O'BRIEN.

Subscribed and sworn to before me, on this 5th day of June, A. D. 1884.

[NOTARIL SEAL] DANIEL B. VERMILYE,
Notary Public, Minn.

Due service of the within admitted, this 5th day of June, 1884.

MERRICK & MERRICK,
Attorneys for Plaintiff.

Reply.

STATE OF MINNESOTA, *County of Ramsey:*

District Court, Second Judicial District.

CHARLES C. BENNETT, as Assignee of Axel B. Van Norman and Gustave Van Norman, Copartners as Van Norman and Brother, Plaintiff,

vs.

H. R. DENNY, Defendant.

Now comes the above-named plaintiff, and for reply to the answer of the above-named defendant, denies each and every allegation and statement of new matter and the whole thereof in said answer
18 contained, and re-avers the truthfulness of each and every allegation and statement in his complaint contained.

Wherefore plaintiff asks judgment as prayed for in his said complaint.

MERRICK & MERRICK,
Plaintiff's Attorneys.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Charles C. Bennett, being duly sworn, on oath says that he is the plaintiff in the above-entitled action. That he has heard read the foregoing and knows the contents thereof, and that the same are true of his own knowledge except as to those matters stated on information and belief, and as to those, that he believes it to be true.

CHARLES C. BENNETT.

Subscribed and sworn to before me this 16th day of June, A. D. 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin County, Minn.

Filed September 15, 1884.

R. W. BELL, *Clerk.*

Service of copy of within reply admitted this 21st day of June, A. D. 1884.

O'BRIEN & WILSON,
Attorneys for Defendants.

19 State of Minnesota, Supreme Court, April Term, 1885.

STATE OF MINNESOTA, *County of Ramsey:*

District Court, Second Judical District.

CHARLES C. BENNETT, Assignee of Axel B. Van Norman and Gustave Van Norman, Partners as Van Norman Bros.,

vs.

H. R. DENNY.

This cause came on for trial before the Hon. H. R. Brill,
20 judge of the district court in and for Ramsey county, with a jury, on the 11th day of November, 1884.

A. N. Merrick, Esq., and A. L. Levi, Esq., appeared on behalf of the plaintiff, and C. D. O'Brien, Esq., appeared on behalf of the defendant.

A jury having been called and duly sworn, Mr. Merrick opened the case on behalf of the plaintiff, whereupon the following evidence was introduced and proceedings had:

L. A. MERRICK, sworn and examined on behalf of the plaintiff, testifies:

Direct examination by Mr. A. N. MERRICK:

Q. Your name in full?
A. L. A. Merrick.
Q. What is your business?
A. Attorney.
Q. Of the firm of Merrick & Merrick?
A. Yes, sir.
Q. In what business were you engaged on the 31st day of December last?
A. Same business.
Q. As such attorney, did you have anything to do with the claim of Purdy & Co. against the Van Norman Bros.?
A. Yes, sir.
Q. On that day?
A. Yes, sir.
Q. What was it?

Objected to as immaterial and incompetent.

The COURT: What do you propose to show.

21 Mr. MERRICK: We propose to show that there was an attachment taken out, as we have alleged, and that the assignment followed the attachment.

Mr. O'BRIEN: The record is the best evidence of that.

Mr. MERRICK: We can put in a copy of the record if necessary, if they object.

Q. You procured the attachment, did you?
A. Yes, sir

Mr. O'BRIEN: That I object to as incompetent.
The COURT: I suppose the record is the best evidence.

Q. I will ask you if you presented this claim to the assignors, the Van Normans?

Objected to as immaterial.

Q. I will ask you if you went into the store of the Van Norman Bros. that day?

Objected to as immaterial.

Mr. MERRICK: I propose to show that he went in with the sheriff of Hennepin county, and propose to show what he did there.

Mr. O'BRIEN: It is objected to that what either he or the sheriff of Hennepin county did is immaterial and irrelevant.

Counsel for the plaintiff offers in evidence copy of complaint in the case of John H. Purdy, doing business under the firm name of J. H. Purdy & Co., against the Van Normans; the affidavit for an attachment the bond for an attachment, with the order of the court, the approval of the bond, and the return and the writ.

Mr. O'BRIEN: The record is objected to as incompetent,
22 irrelevant, immaterial, insufficient, and not a complete record. No service, no summons, no return of service of summons, and the return on the writ of attachment bears date after the assignment was made.

Objection overruled and defendant excepts.

The record introduced was marked Exhibit "A."

Q. Was there a summons issued in that case?
A. There was.
Q. What was done with it?

Objected to as irrelevant and immaterial.

A. The original summons and two copies were handed to the sheriff with the writ with directions to serve them on the defendants.
Q. The sheriff or his deputy?
A. John Peterson, the deputy sheriff.
Q. About what time was it?

A. It was a few minutes before 12 of the 31st of December—12 o'clock noon.

Q. Did you go with him?

A. I did.

Q. Where to?

A. I went to the store of the Van Normans.

Q. Situated where?

A. 419 Nicollet avenue, in Minneapolis; and was there while he took possession.

Q. What county?

A. Hennepin county, Minnesota, was there while he took possession of the store and stock under the writ.

Mr. O'BRIEN: I move to strike out that testimony; the return of the sheriff here shows that he did nothing of the kind.

23 The motion to strike out was granted by the court.

Q. That was about noon?

A. Yes, sir.

Q. What did he do with reference to the store?

Objected to as immaterial, irrelevant, and that the return of the sheriff shows what he did.

The COURT: I think I will allow you to show. I do not think you can contradict the return showing that he levied on more property than he returns.

To this ruling the defendant's counsel duly excepted.

Q. What did he do with reference to the store?

A. He announced to the clerk that he came there with an attachment; locked the door and pasted up papers over it; pulled one of the window curtains up and took possession of the store and stock and so announced.

Q. What about the fixtures?

A. Everything in the store and workshops.

Q. What, if anything, was done with reference to the door?

A. I said the door was locked and papers were pasted over the glass.

Q. That was a little after 12, you say?

A. We left the court-house at 12 o'clock and went directly there.

Q. How long did you remain there?

A. How long did I remain there?

Q. At that time, yes; how long did you remain there?

A. Not to exceed ten minutes.

Q. Did you return that afternoon?

A. I did.

24 Q. State who was in possession then.

A. Peterson, the deputy sheriff.

Q. About what time was that, should you judge?

A. I think I was in there about three o'clock.

Q. What was the condition of the store then?

A. The same.

Q. Locked?
A. Locked; and he unlocked it to let me in.
Q. Lock it again?
A. He did.
Q. That was about three o'clock?
A. Yes, sir.
Q. When did you go back next?
A. I think it was about five o'clock.
Q. Well, what was the condition of things then?
A. The deputy sheriff was in there; Mr. Hopping was there, Mr. Ringwald was there, and Mr. Moreland.
Q. What is Hopping's name, do you know?
A. He gives it as Gus. J.
Q. You were in there when they went in?
A. No, sir; I was not.
Q. What was the sheriff then doing?

Objected to as immaterial.

Q. He still remained there, did he?
A. He did.
Q. That afternoon did you make out an assignment?
A. I did.
Q. For whom?
A. For Axel and Gustave Van Norman, copartners.
Q. About what time was that made and executed?
25 A. It was executed about half past two.

Counsel for the plaintiff offers in evidence a certified copy of the assignment.

Objected to by defendant's counsel as incompetent and immaterial, and that the assignment is void under the statutes of Minnesota.

After argument on behalf of the respective parties the court overruled the objection and defendant's counsel duly excepted.

Thereupon court adjourned until 9.30 a. m., November 12, 1884.

ST. PAUL, *November* 12, 1884.

Court having convened, pursuant to adjournment, on the morning of the 12th of November, the trial of the cause of Bennett *vs.* Denny proceeded as follows:

Counsel for the plaintiff offers in evidence the assignment of Axel B. Van Norman and Gustave Van Norman to the plaintiff in this action, containing the acceptance of the trust on his part, in writing, with the affidavit as to the value of the property, with the bond and approval of the court, with the schedules of property, schedule of debts, and the certificate of the clerk of the court.

Objected to as incompetent, no foundation laid for introduction, and that it appears upon the face of the assignment that it is an assignment of partnership property alone, and is absolutely void upon its face.

26 Pending a ruling upon the objection, further evidence was introduced as follows:

L. A. MERRICK, recalled on behalf of the plaintiff, testified as follows:

Examined by A. N. MERRICK:

Q. Do you remember the claim of J. H. Purdy & Co.?
A. Yes, sir.
Q. Did you present it to the Van Normans on the 31st day of December?
A. I did.
Q. What did they say with reference to it?
A. I presented it to Axel Van Norman; he admitted its correctness, but said he was unable to pay.
Q. Said that it was correct?
A. Yes, sir.
Q. That is the same claim upon which the suit was brought?
A. That is the same claim.
Q. And the one upon which the attachment was issued?
A. Yes, sir.
Q. The one we had here yesterday?
A. It is the claim of J. H. Purdy, of J. H. Purdy & Co., and the one on which the attachment was issued.
Q. These papers?
A. Yes, sir.

27 Plaintiff's counsel here renewed the offer of the assignment papers, etc., whereupon the same objection as before was interposed.

The COURT; I have some question whether the admission of Van Norman that it was correct would be sufficient as against this defendant.

Cross-examination by Mr. O'BRIEN:

Q. Are you Mr. A. N. Merrick?
A. L. A. Merrick.
Q. You are the law partner of Mr. A. N. Merrick?
A. Yes, sir.
Q. Who is your father?
A. Yes, sir.
Q. You testified that you were the attorneys of John H. Purdy?
A. Yes, sir.
Q. On the 31st of December last?
A. Yes, sir.
Q. The plaintiffs in this action that was brought against the Van Normans?
A. Yes. sir.
Q. Was your firm also at that time the attorneys of the Van Normans?
A. Not in that action.

Q. Were Van Normans your clients?
A. Well, in one sense they were.
Q. Well, there is not more than one sense in a man being a client, is there?
28 A. There is when you say: Were we the general attorneys. We were not.
Q. You also became on that same day—your concern also became the attorneys for the assignees?

Objected to as incompetent, irrelevant, and immaterial and not cross-examination.
Objection overruled and exception by plaintiff.

A. Yes, sir.

Same objection and exception to all of these questions.

Q. Mr. Merrick, what time of the day did you testify that you went to get that writ of attachment?
A. I testified that I left the court-house to come back about 12 o'clock.
Q. When was the complaint, in fact, drawn?
A. It was drawn during the morning.
Q. Well, with reference to 12 o'clock, how soon before 12 o'clock?
A. It was drawn after I got to the office and opened the morning's mail.
Q. It wasn't you that made the affidavit for attachment; did you draw the affidavit?
A. Well, I wouldn't be certain whether I did or not. I think it was Mr. Bennett who made the affidavit. I didn't make the affidavit.
Q. Did you know any facts concerning it? Did you know the facts contained in the affidavit that these parties were disposing of their property fraudulently, with intent to hinder and defraud their creditors?

Objected to as incompetent and immaterial.
29 Objection sustained.

Q. When was it that the assignment was drawn.
A. It was completed about half past one.
Q. When was it commenced?
A. It was commenced, I should judge, about one or a quarter of one.
Q. At the time that you went to get this writ of attachment did you understand that the assignment was to be made?
A. I did not.
Q. You didn't?
A. I did not.
Q. You didn't suppose that any assignment was to be made then?
A. I didn't suppose anything of the kind. I simply went for the writ.
Q. I am asking you if, at the time you went to get the writ of attachment, you supposed that there was any assignment to be made?

Objected to as incompetent, immaterial, and not proper cross-examination.

The COURT: I don't think that question in itself is material. It may have some bearing. You may ask the question once more, I think, if you have any doubt whether the witness understood it.

Exception by plaintiff.

Q. Do I understand you to testify that at 12 o'clock on the 31st day of December, 1883, that you didn't know anything about an assignment being about to be made for these Van Normans?

30 A. Yes, sir.

Q. When did you first hear of it?

A. Axel Van Norman came into the office——

Same objection.

Q. I ask you when did you first hear of it?

Same objection.

The COURT: You may ask the question.

Q. When did you first hear the subject of the assignment discussed or adverted to?

A. It was one or a quarter of one.

Q. That was the first you heard of it? You were a good deal surprised too, weren't you?

A. Well, I can state, Mr. O'Brien, that on——

Q. Never mind; just answer the question.

A. I can state that I had no connection with the business that the Van Normans had had in the office.

Q. Well, then, you didn't know anything about it; you were simply obeying the orders?

A. I simply obeyed Mr. Purdy's orders.

Q. Now, isn't it so that before the 31st day of December your father, Mr. Merrick, had gone to Chicago for the express purpose of getting an extension from all of Van Norman's creditors?

A. He had gone to Chicago; yes.

Q. He had been down for that purpose, hadn't he?

A. So I understand.

Q. Employed by the Van Normans for the purpose of getting an extension from all their creditors?

A. So I understand.

Mr. MERRICK: A compromise?

31 Mr. O'BRIEN: Yes; a compromise; went down there for that purpose.

Q. Did you receive any instructions from your law partner, Mr. Merrick, in relation to bringing this suit for the Purdys?

A. Well, I can't say as to who it was that opened the letters that morning.

Q. Eh?

A. I can't say who it was opened the letters that morning.

Q. I am not asking you about opening letters—I ask the plain

question, whether you received any instructions from your father in bringing this suit for the Purdys against Van Normans?

A. Well, whoever opened the letters did the business.

Q. I ask you if you received any instructions from Mr. Merrick.

A. I say I can't say whether he gave me any instructions or not.

Q. Did you accompany the sheriff to the Van Normans' store?

A. I did.

Q. Purdy claims about $500?

A. $525, I think.

Q. The Van Norman stock was worth between nine and ten thousand dollars, wasn't it?

A. I think so.

Q. Did you tell the sheriff to levy on that stock?

A. Yes, sir.

Q. On everything?

32 A. On everything; everything there was there.

Q. And to lock the door?

A. And to lock the door.

Q. And what there was in there was worth between nine and ten thousand dollars?

A. I think so.

Q. Why did you tell the sheriff to levy on everything?

A. Because I wanted to get—I wanted to get all I could.

Q. Did you expect to take a ten thousand dollar stock on a $500 claim?

A. I expected to levy on it.

Q. Well, what—you are an attorney—isn't it a fact that a sheriff or plaintiff making an excessive levy is apt to make his client liable?

A. He might.

Q. It is contrary to professional teachings to make an excessive levy, isn't it; it is apt to involve a client in a good deal of trouble?

A. It may.

Q. Well, now, will you please state whether or not you intended to take ten thousand dollars' worth of goods under $500 attachment?

A. I intended to levy on it.

Q. Why?

A. Because I was anxious to get, on that attachment, all we could.

Q. Why, what did you want on that attachment more than the amount of your claim?

33 A. Well, I wasn't competent, nor the deputy either, to judge of what would cover our attachment. I say I think that stock was worth between nine and ten thousand dollars.

Q. And you told the deputy to levy on the whole of it?

A. I told the deputy to take the whole stock.

Q. Now, I want you to get right down and tell this jury why you did that.

A. Well, I don't know as I can repeat it in any different form; it was simply because I wanted to get all I could.

Q. Did you want to get more on that levy than your claim amounted to?

A. I don't understand that question.

Q. Well, you say you wanted to get all you could; you had ten thousand dollars' worth of property to meet your $500 attachment.

A. I don't say I had ten thousand dollars.

Q. You say in your judgment you had?

A. Yes, yes.

Q. You thought so at the time?

A. Yes.

Q. Well, now, tell the jury why you ordered that levy; why did you want to levy on ten thousand dollars' worth of goods to secure $500?

A. I don't say I knew it was ten thousand, but I say I thought it was that.

Q. I am taking your belief; don't you know, as a matter of fact, that if you, as attorney for Purdy & Co., with due authority, levied on ten thousand dollars to secure $500 that you would make your client liable for all the damages that would result?

34 A. Oh, not necessarily.

Q. Not necessarily; but wouldn't there be a risk of it?

A. There is a risk in a great many things.

Q. Don't you know, if it could be shown that J. H. Purdy levied on ten thousand dollars' worth of property, and closed a man's store, for the sum of $500, that he would be cast in damages for it?

A. He might.

Q. And don't you know that there would be a suit that would cost him a good deal more than $500 to defend?

A. I think that would lead to the doctrine that every debtor must be an expert.

Q. Now, isn't it a fact that you made that levy on that entire stock intending that the sheriff should hold possession there until the assignment was made?

A. No, sir; not until the assignment was made.

Q. Didn't you intend that the sheriff should hold possession of that stock there until the assignee was ready to take possession and that he should hold there until he delivered it to the assignee, and wasn't that your idea in locking the door?

A. No, sir.

Q. To keep other people out?

A. Yes; to keep other people out.

Q. Why did you want to keep other people out?

A. Because I didn't want other people interfering with me.

Q. Why didn't you want other people to come in there; didn't you want any other levies made?

A. No, sir; I did not.

35 Q. Why not?

A. I wanted the least complications we could get.

Q. Well, why didn't you want any other levies made?

A. Simply to avoid all this question.

Q. Well, now, wasn't it your idea that the sheriff should remain

in possession until the assignee took possession from him, and make a clean thing?

A. No; my idea was to have him remain there until further orders.

Q. What further orders did you expect to give him?

A. If we had had an expert and gone in there we might have valued that stock and taken a sufficient inventory.

Q. You left the court-house about 12 o'clock; you got up to Van Normans about a quarter past twelve?

A. Yes, sir.

Q. You made this levy—told the sheriff to take possession of everything and lock it up; how long did you stay there?

A. I think five or ten minutes.

Q. You went right over to the office, and a bout aquarter of one the assignment was drawn up?

A. Well, one or a quarter of one; it wasn't drawn at that time—it was commenced.

Q. Well, it doesn't take very long to fill a blank?

A. Well, if you got at it uninterruptedly.

Q. And you finally got it filed by 7 o'clock that night? Now, who were Merrick & Merrick acting for when they drew that assignment?

36 A. We were acting for the Van Normans and for the benefit of the Chicago creditors.

Q. Did you know, when you drew that assignment, that it was going to cut out the Purdy claim?

A. No; I didn't consider it in that light.

Q. Wouldn't it, as a matter of fact?

A. It would cut out the attachment.

Q. Well, that is what I say—cut out the attachment?

A. Yes.

Q. Simply cut out the attachment, wouldn't it?

A. Yes, sir.

Q. And still you drew the assignment and sacrificed the attachment that had been made?

A. Yes.

Q. Although, at the time you made the attachment, you had no idea that there was going to be an assignment?

A. No, sir.

Q. And both the procuring of the writ of attachment and the commencing of the assignment occurred within the space between 12 o'clock and a quarter of one—45 minutes?

A. The levy of the attachment was about a quarter past 12, and I commenced drawing the assignment about a quarter of one.

Q. You say you didn't make the affidavit for the writ of attachment?

A. No, sir.

Q. So far as you know, you knew no grounds of it?

A. Not of my own knowledge.

37 Q. Your firm had been in charge of the Van Normans' business, and Mr. Merrick, Sr., had been down to Chicago a

week before trying to compromise with these creditors, and you occupied the relation of attorney and client?

A. For that special purpose.

A. Well, that special purpose involved the business life of the Van Normans, and it was a confidential relation, wasn't it?

A. Yes.

Q. Now, in your investigation of their business you had found them to be honest men, hadn't you?

Objected to as incompetent and immaterial.

Question waived.

Q. Now, Mr. Merrick, after that attachment was made on those goods by the sheriff, what other steps, if any, were ever taken in the action of Purdy against Van Norman?

A. The return on the writ, and the service of the summons and the inventory.

Q. The inventory was served on the first of January, as appears by the return. What was done in court about that case; was any judgment ever taken?

A. Not to my knowledge.

Q. Has anything been done excepting to cause this deputy sheriff to make return on those papers to evidence the issuance of the attachment and the levy of the writ?

A. Not to my knowledge,

Q. You have never proceeded to judgment; you have never entered your judgment; you have never got any costs?

A. No, sir.

38 Q. When were those returns made by Mr. Peterson as a matter of fact. They are all dated the 31st day of December; they were not made on that day, were they?

Objected to as immaterial.

Objection sustained.

Q. Do the relations of your firm, as the attorneys of the Van Normans, continue up to this time?

Objected to.

The COURT: You may ask the question.

A. I couldn't say that, Mr. O'Brien.

Q. As far as you know, don't you know who your own clients are?

A. Certainly, I do.

Q. Now, ain't those men your clients?

A. No; I don't think they are.

Q. When did the relation cease?

A. When the special work was performed for which we engaged ourselves.

Q. Did your firm appear for them in the United States circuit court in this case of Lapp & Flershem?

A. Yes, sir.

Q. Are you the attorneys of record for them?
A. Yes. sir.
Q. Have you ever been discharged?
A. No, sir.

GUSTAV VAN NORMAN, sworn for the plaintiff, testified:

By Mr. MERRICK:

Q. What is your name?
A. Gustav Van Norman.
39 Q. Where do you live?
A. I live in Minneapolis, Twelfth street, No. 10.
Q. Did you live there in December last?
A. Yes.
Q. Are you a member of the firm of Van Norman Bros.?
A. Yes, sir.
Q. Who was the other member of the firm?
A. Axel B. Van Norman.
Q. And you are the parties who made this assignment, are you?
A. Yes, sir.
Q. Did you on the 31st of December last (your firm) owe J. H. Purdy of Chicago?

Objected to as incompetent.
Objection overruled and exception.

A. Yes, sir.
Q. Did you owe J. H. Purdy of Chicago?
A. Yes.
Q. Do you remember the amount?
A. $525, I believe, and a few cents.
Q. Is that the claim upon which suit was brought against you?
A. Yes.

Cross-examination by Mr. O'BRIEN:

Q. What was that for?
A. For jewelry.
Q. When did you buy it?
40 A. I don't remember the time.
Q. What months did you buy it in?
A. I believe it was the first of September.
Q. All bought in September?
A. Yes, I believe.
Q. It was all bought in September, was it. Are you sure of that?
A. No, I don't remember.
Q. Well, let us know when this claim was bought?
A. I didn't buy the goods.
Q. Oh; then you don't know?
A. My brother bought it.
Q. Then, how do you know—it is only what your brother told you that you know about it?
A. I know it from the bill.

Q. Well, you have got no personal knowledge if you didn't make the trade. Your brother bought the goods?

A. Yes.

Q. Where did he buy it—in Chicago?

A. Yes, sir.

Q. You were not there when he bought?

A. No; I wasn't there.

Q. All you know about it is that you saw some goods in the store that are said to come from Purdy, and a bill?

A. Yes; I know it was $525.

Q. You don't know the month they were bought and the time they were bought?

A. No, sir; I don't remember.

Q. What is the general time that you bought your goods on?

41 A. Ninety days, I think.

Q. Some of it four months, wasn't it?

A. I don't remember.

Q. Some of your goods were bought on four months, weren't they?

A. Yes.

Q. Ninety days and four months were your usual terms?

A. Yes.

Q. Those were the terms you got from Purdy?

A. I believe—I don't know how long time it is, but I believe—it was ninety days.

Q. There wasn't any difference in his terms from any of the other men?

A. There might be difference.

Q. You don't know?

A. No.

Q. But if those goods were bought from him in October on ninety days' time they wouldn't be due in December, would they?

A. I don't know how long a time we had it.

Q. Will you swear that there was any money due and payable to Purdy on the 31st day of December from your firm?

Objected to as incompetent and not proper cross-examination.

The COURT: I think it is proper cross-examination.

Exception by plaintiff.

A. I believe the money was due the first day of December to Purdy.

42 Q. You think the money was due the first of December to Purdy?

A. Yes.

Q. It was bought on ninety days, was it?

A. Yes; I don't remember how long a time.

Q. You say it was bought in September?

A. I didn't say that we bought it in September.

Q. You said you thought it was bought in September?

A. I say I don't know.

Q. That you don't know. You don't know whether it was due or not, do you?

A. I know it was due. I believe it was due on the first of December.

Q. How do you know if you don't know the time it was bought?

A. I can't swear the time it was bought.

Q. Had Purdy & Co. been "dunning" you for that claim; had they been asking you for it?

A. Yes.

Q. How many times before the 31st of December had he been asking you?

A. I don't know what time they asked first. Of course, my brother——

Q. I am talking about what you know; had you ever seen any of Purdy & Co.'s men asking for money?

A. No, sir.

Redirect examination by Mr. MERRICK:

Q. That was for goods you had of Purdy & Co.?

A. Yes.

43 Q. And you owed that debt on the 31st day of December last?

A. Yes; we owed it.

Q. And he had been asking for it?

A. Yes.

Q. And your firm had been unable to pay it, had they?

A. No.

Q. They hadn't been able to pay it?

A. No; they couldn't pay it.

L. A. MERRICK, recalled on behalf of the plaintiff, testified:

Counsel for plaintiff reoffers the assignment and record.

Same objection.

Objection overruled and exception by defendant.

The COURT: I didn't understand you to object to the specific parts of it; perhaps the schedules may not be material.

Mr. O'BRIEN: I don't care about that.

The COURT: Objection overruled and paper marked Exhibit "B."

Redirect examination continued by Mr. MERRICK:

Q. Now, after the assignment was made, executed—you say that was executed there about what time—the assignment?

A. Half past two or three o'clock.

Q. Who did you deliver it to?

44 A. I delivered it to Mr. Bennett.

Q. You went into the store afterwards?

A. Yes, sir.

Q. About what time was that?

A. I went in about three o'clock.

Q. Well, after three o'clock, I mean.

A. The next time I was in the store, I think, it was along about five. Along in that neighborhood somewhere.

Q. Was the sheriff there then?

A. Yes, sir.

Q. Then when did you next go in?

A. Well, it was a few minutes after seven, I think.

Q. With whom?

A. With the assignee, and I think yourself.

Q. That was a little after seven, was it?

A. Yes, sir.

Q. Who was then in the store?

A. The deputy sheriff was there.

Q. Peterson?

A. Peterson. I think Hopping was there. Mr. Moreland, Mr. Ringwald, and I think the sheriff himself was there.

Q. Stoddard?

A. Yes, sir; I think Axel Van Norman was in there.

Q. What was done or said by the assignee, the plaintiff in this case, there?

A. He spoke to the deputy sheriff, and announced that he was the duly appointed assignee, and pulled out his bond, with the
45 approval of Judge Young on it, and demanded of Peterson the possession of the stock and the store.

Q. Did he say anything about having filed the assignment?

A. He stated that he was the duly appointed assignee, and that the assignment had been filed in the clerk's office.

Q. And showed his bond?

A. Yes, sir.

Q. And the approval of the court?

A. Yes, sir.

Q. And demanded what, under him?

A. Demanded of Peterson, the deputy sheriff in charge, the possession of the store and the stock and fixtures, and everything else.

Q. What did the sheriff do?

A. The sheriff turned over to him the possession of the store, the stock, gave him the key to the front door, and gave him manual possession of some watches that were in a bunch by themselves on top of the show-case.

Q. A part of the stock?

A. A part of the stock.

Q. Where were those watches?

A. They were on the show-case nearest to the front door, in the trays that were put inside the show-case.

Q. What was done with those watches that were in the trays on the show-case when you were there?

A. Mr. Bennett put his arm on them and took possession of them and the store and the stock and fixtures, as assignee.

46 Q. Did he make any announcement there?

A. That was the announcement that he made.

Q. Who was there, did you say, besides the sheriff, in the store at that time?

A. There was Mr. Ringwald; he represented Mr. O'Brien, as I understood; Mr. Moreland, Mr. Hopping.

Q. Who did Hopping represent?

A. He claimed to be a United States deputy marshal.

Q. Now, what else occurred while you were there, if anything, with reference to that property?

A. As soon as the sheriff turned over the manual possession of these watches to Bennett, Bennett either put his arm on them or around one of the trays; they were all in a bunch. Hopping stepped up and said, "I levy on these."

Q. What did he do with them?

A. He took them away from Bennett. Bennett says, "these are mine, as assignee."

Q. Well, what next occurred?

A. I think the marshal proceeded to make an inventory. He had one partially made; he went on.

Q. Do you remember who was in back handling goods or pretending to; pulling down goods, handling them?

A. Mr. Moreland was handling goods. I think, when we first went in he was acting as caller.

Q. What was Hopping doing, if you remember?

A. I don't think he was doing anything special except standing around. Mr. Ringwald was taking down the items.

47 Q. During this time did any other United States officer appear upon the scene?

A. Major Brackett came in.

Q. About what time was that?

A. I can't say how soon after we got there that he came there that it was.

Q. Well, what occurred there? Did you see anything of the transaction afterwards? State it.

A. Well, the rest of the evening was devoted to their inventory; a part of the time Moreland acted as caller, and a part of the time Axel Van Norman, and part of the time Mr. Bryant.

Q. Who was Mr. Bryant?

A. He was the watchmaker in the store.

Q. Well, when did you go away from there?

A. Well, I left the store between ten and eleven.

Q. Where was Bennett at that time?

A. He was in the store claiming to be in possession.

Q. So you, as attorneys for the assignee, brought him in there and made a demand from the sheriff who held for Purdy the goods which you, as attorneys for Purdy, had ordered the sheriff to take possession of?

No answer.

Q. Then you, as attorneys of Purdy, told the sheriff to surrender it to you as attorneys for the assignee?

A. No; not exactly.

Q. Well, it came very near that, after you get the alliteration out. Well, then, the marshal kept right on making his inventory, and Bennett staid there claiming the goods?

48 A. Yes, sir.

Q. The last you saw of Bennett that night he was still claiming the goods and the inventory was going right on?

A. Well, I think the inventory was completed before I left the store. Bennett was still claiming the goods.

Q. And the goods had not been surrendered to him by the marshal?

A. Not by the marshal; no, sir.

Q. And he hasn't got them yet?

A. Not that I know of.

Q. And he ain't going to. That is all.

JOHN PETERSON, sworn on behalf of the plaintiffs, testified—

By Mr. MERRICK:

Q. What is your full name?

A. John Peterson.

Q. Where do you live?

A. In Minneapolis.

Q. Did you reside there in December last?

A. Yes, sir.

Q. On the 31st day of December what was your employment?

A. Deputy sheriff of Hennepin county.

Q. As such deputy sheriff did you have placed in your hands a writ of attachment, and the papers in favor of J. H. Purdy and against Van Norman Bros. on that day.

A. Yes, sir.

Q. What were the papers?

A. It was a—two copies of the assignment and a writ of attachment.

49 Q. What did you do under that writ of attachment?

A. I proceeded up to the store, the place of business; took charge of the place.

Q. About what time?

A. A few minutes after twelve.

Q. What did you do there?

A. I stayed there.

Q. I know; but what did you do?

A. I went there and took charge of the place, got the key and locked her up and stayed there.

Q. Locked the store up?

A. Yes, sir.

Q. What did you do with the windows—anything?

A. I hung some paper before the door and windows; I done it because callers there wanted to get in; and I closed her up and hung up the curtains.

Q. You closed the thing up?

A. Yes, sir.

Q. Who went with you to the store?

A. Lou. Merrick.

Q. The young man?

A. Yes, sir.

Q. Who was in the store when you went in?

A. It was a gentleman in there; who, I couldn't tell his name. He was a watchmaker that worked there in the window.

Q. A man that worked there?

A. Yes, sir.

Q. Well, you took possession of all the property?

A. Yes, sir.

50 Q. In the store?

A. Yes. sir.

Q. How long did you remain in possession of it?

A. I remained there steady from the time I took possession until pretty near eight o'clock, or between seven and eight some time.

Q. Well, what occurred in the afternoon?

A. Well, about between four and five, I should judge (I am not positive about the hour)——

Q. You made your levy, did you?

A. Yes, sir; that is, I took charge of the place, locked the door and stayed there. About four o'clock there was a rap at the door, and I looked out through and I saw a gentleman standing outside that looked very much like Mr. Merrick—Lou. I wasn't thinking much of anything; I thought it was all right; I opened the door, face to face with the United States marshal and Mr. O'Brien, and some other gentleman from St. Paul.

Q. Well, who was it came in the door?

A. Mr. Hopping.

Q. This man over here?

A. Yes, sir.

Q. Who was with him?

A. Mr. O'Brien and three other gentlemen; I couldn't just name them. I know their faces; they are all here.

Q. This gentleman back here one?

A. Yes, sir; Mr. Moreland, I believe.

Q. What time was that?

51 A. About four o'clock, I think; a few minutes before or a few minutes after; I couldn't say exactly as to the hour.

Q. Well, what was done?

A. Well, they had a writ of attachment also, but I told the gentlemen just as they came in through the door that I had charge of the place; was in possession.

Q. You told them that you was in charge of the place?

A. Yes, sir. Mr. O'Brien demanded my writ and I showed it to him, and he says: "We'll recognize you as far as your writ goes, as far as the amount is concerned."

Q. What did you do and say?

A. Well, I says that I had possession and that I claimed it.

Q. That you claimed possession?

A. Yes, sir.

Q. Well, go on and state next what occurred.

A. Well, the next thing, he demanded an inventory; that we would go to work; that I would have to take an inventory and call

out what stock I wanted for my amount; and in regard to that I couldn't command, because I had nobody there to rely upon as a man that would know the prices of the goods; but finally there was an expert in the gentlemen's company that knew the prices, and we went to work to taking the inventory. We proceeded until there was an amount—about nearly $1,400; that was, so to say, left for my writ, for my amount; and they proceeded and took the balance on their writ.

Q. Was that done with your consent?

52 A. It wasn't done with my consent, because my instructions from the attorneys were to hold the whole thing; and it was discussed several times about my having no right to hold any more than just the amount of the writ that I had in my pocket. The only thing I referred to was to notify the sheriff himself in person to come up, and it was done, but he didn't come up until pretty late.

Q. Well, what next occurred later on?

A. Later, about seven o'clock, or thereabout, or about six o'clock, the sheriff came first—let him in—and the next, about seven o'clock I should think it was, Mr. Bennett came in and announced himself as receiver, as an assignee to take charge of the place. He came in with the papers, appointed as an assignee, the way I understood it. He showed it to me and I asked the sheriff. The sheriff stood by his side, and I called his attention to it, and he says, "that's all right." He says, "give it up."

Q. What did you give up to the assignee, if anything?

A. I gave up my possession there, and gave him the key.

Q. And the store?

A. Yes, sir.

Q. And gave him the property in it?

A. Yes, sir.

Q. Including that that they had allowed you to keep?

A. Yes, sir.

Q. Where was that?

A. That was laying on top of the show-case. The show-case that was next to the front door.

Q. And what did it consist of?

A. Of a lot of watches, gold and silver and nickel cases.

53 Q. At the time the assignee came in there, Mr. Bennett, with his papers, had you perfected your inventory of the property that you was going to take—had you got through with it?

A. At the time that Mr. Bennett came in?

Q. Yes.

A. Yes; I think so.

Q. What did Mr. Bennett say or do when you turned over the possession of the store and the property?

A. He made a demand of the other parties there to surrender the property—of the property that they had levied on.

Q. Did you stay there after that?

A. No; I didn't stay—well, I went off and got my supper and came back again.

Q. Now, Mr. Peterson, from the time you went in there you closed the door?

A. Yes, sir.

Q. From that time until these parties came in did any property leave the store?

A. No, sir.

Q. That is, did you move any property?

A. Didn't touch anything.

Q. Was there any removed by anybody else that you saw?

A. Nothing; only they were moving while they were taking the inventory; there was nothing taken out of the store while I was there.

Q. Who was handling these goods, the jewelery, while you were there, against your objections?

54 A. Well, they were handling it.

Mr. O'BRIEN: He hasn't said that he made any objections yet.

WITNESS: Mr. Hopping, and this Mr. Moreland, and they were handling the goods, taking the prices.

Q. Well, they had these goods in their hands, didn't they?

A. Yes, sir.

Q. They were handling watches?

A. Yes, sir.

Q. And handling jewelery?

A. Yes, sir.

Q. And were in and about, and all around the store?

A. Yes, sir.

Q. State whether the safe was there at that time?

A. Yes, sir.

Q. It was there?

A. Yes, sir.

Q. Did you go into what was called the little work room in the rear?

A. Yes, sir; I went in there as I came in to see that the doors were locked and everything closed up.

Q. You saw it was all closed up?

A. Yes, sir.

Q. Did the Van Normans come in there after you took possession; either of the Van Normans come into that store from the time you took possession and locked the door up to the time the deputy marshal arrived; Hopping arrived with his attorney?

55 A. Yes; they were both in there right after dinner, so to say; about one o'clock; not together, but one came in—Gustave Van Norman came in first. I served the summons on him and got the key to the door; then he left, and in a few minutes afterwards Gustave (?) come in, and he was in a very few minutes; he had some repairing to do in the back room; he asked me to stay a few minutes while he was repairing, and he finished his job and I stayed with him a few minutes there in the back room while he fixed a ring, I think, or something. I didn't pay much attention to what he did, but I noticed that he was there a few minutes and

then he went off and stayed off; well, I didn't see him any more that day; he didn't come around at all.

Q. Did either of the Van Normans take anything from the store?

A. Nothing that I could see; no, sir.

Cross-examination by Mr. O'BRIEN:

Q. Sheriff, did you go to dinner that day?

A. No, sir.

Q. You got no dinner at all.

A. I didn't get any dinner that day.

Q. How long had you been deputy sheriff of that county?

A. Well, I was deputy a little over a year at that time.

Q. You were reasonably familiar with the duties?

A. Yes.

Q. You had a writ of attachment for $525?

56 A. Yes, sir.

Q. You went into this jewelry store, and they had quite a stock, somewhere between nine and ten thousand dollars, you supposed, at the time?

A. Yes, sir; I thought so.

Q. Did you undertake to take possession of that entire property under that writ for $500?

A. Well, that is a question I couldn't determine; but I held possession.

Q. You were told to keep the store shut up, weren't you, by the attorneys who put the writ in your hands?

A. Yes, sir.

Q. You had very much doubt as to whether you had a right to do it?

A. No, not that; my ground for closing up the place was merely until I got some assistance.

Q. Until you got a chance to make the levy?

A. Yes, sir.

Q. As a matter of fact, you didn't undertake to levy on all of the stock of goods for $500?

A. I didn't undertake to make the levy until I was sure whether I had a right to or not; but I held the possession.

Q. Had you taken any steps to make the levy until the time I got there?

A. No, sir; I was waiting for the sheriff.

Q. You didn't expect to be in the store long, did you?

A. I don't think so.

Q. You expected there would be an assignment, didn't you?

A. I didn't know anything about that at that time.

57 Q. When I got in there I asked you if you were in possession of that stock, didn't I?

A. Nothing said about it. You said you recognized me for the amount.

Q. Didn't I ask you the question, after you showed your writ, whether you undertook to say you had levied on or was in possession of the entire stock?

A. I can't remember that there was anything said like that.

Q. Well, as a matter of fact, didn't I tell you to take enough to satisfy your writ and the marshal would take the rest?

A. Yes.

Q. Didn't you agree to that?

A. I didn't agree to it. I agreed to go to work and take the inventory.

Q. Did you say you would?

A. And hold my possession until I got some assistance from our attorney.

Q. You didn't forbid the marshal taking anything; you didn't forbid his taking the stock?

A. I didn't, for I had no right to.

Q. Well, as a matter of fact, you did not, did you?

A. No.

Q. You had no trouble with the marshal; you and he got along all right. You didn't forbid his doing anything that he did do there, did you?

A. No; I don't think there was——

Q. You did not? Now then, as a matter of fact, didn't
58 you, before seven o'clock, select some $1,500 worth of watches that you put into this return and satisfy your writ?

A. Yes, sir.

Q. Isn't that the extent of the levy you made there?

A. That was the extent of the amount I could get so as to satisfy my amount.

Q. That was the extent of the stuff you levied on, you made the return here?

A. Yes, sir.

Q. Is not the amount a true return?

A. I should think so; I wouldn't sign my name to it unless it was.

Q. When did you make this return with reference to the occurrence?

A. The return was made, if I am not mistaken, the 2nd day of January.

Q. Now, when Bennett came in there and claimed this property as assignee, the marshal's inventory had got pretty well ahead hadn't it? He had been making the inventory from four o'clock of the afternoon until 7?

A. Yes, sir.

Q. Wasn't his inventory about completed?

A. I think it was very near it.

Q. And at that time you had no claim on anything excepting those watches that you took in your return?

A. Well, my claim in regard to that was that I held possession.

Q. I don't care anything about that; I am talking about the fact of the goods you took. Of course you are in possession of that seat now, but you don't own this court-room by a good deal.
59 The question, is whether or not you levied upon the entire property. With the exception of the property contained in

your return the marshal had taken everything and completed his inventory in that store, hadn't he?

A. Well, as far as the levy is concerned, in regard to the return on the writ, of course that is correct.

Q. And he had taken all of these goods without any objection from you or any warning from you not to do it; you hadn't forbidden his doing it?

A. Well, there some words in regard to it.

Q. Had you, as sheriff of Hennepin county, forbidden his doing it?

A. There was some question in regard to whether he had the right to, or whether I had a right to; but there was a final settlement that we both had possession; that is what we said.

Q. You for the purposes of your levy, and he for the purposes of of his levy?

A. Yes, sir; it was a question in my own mind whether I had actually a right to hold at all, but I wouldn't surrender until I had found out from my authority whether I had a right to.

Q. Who was in the store with you before I came, besides you?

A. It was the watchmaker, and Emanuel was in the back room at the time we came in.

Q. Emanuel was one of the employees there?

A. One of the partners, I think; a brother of the Van Normans. They were not in the store all the time, but they came in be-
60 cause the watchmaker wanted his tools, and the brother of Van Normans was in the back room from the time he came back from dinner.

Q. So all those people were there all the time?

A. Yes, sir.

Q. The watchmaker took his tools away?

A. No; I don't think he did that day; yes; I think he took it after the—

Q. Do you know whether the safe was locked; any drawers in the safe locked?

A. The safe wasn't locked when I came in there.

Q. Were any of the drawers in it locked?

A. I didn't examine the drawers.

H. A. WANNER, sworn for the plaintiffs, testified—

Examined by Mr. MERRICK:

Q. What is your business?

A. Wholesale jeweler.

Q. What business were you engaged in last December and prior to that?

A. Wholesale jeweler.

Q. Minneapolis?

A. Yes, sir.

Q. Did you know the Van Norman Bros.?

A. Yes, sir.

Q. During the latter part of December did you have occasion to examine this stock of goods?
A. I did; yes, sir.
Q. I will ask you how long you have been engaged in the jewelry business?
61 A. About seven years.
Q. As a wholesaler?
A. No, sir; three years as a wholesaler.
Q. And the rest of the time as what?
A. Employed as a salesman.
Q. You know the value of different kinds of jewelry?
A. I have some idea of it; yes, sir.
Q. Well, you think you do?
A. Yes, sir.
Q. Handle a great deal of it?
A. Yes, sir.
Q. You say you were there how late in December?
A. The Saturday prior to the first; I think about the 29th of December.
Q. About the 29th of December?
A. Yes, sir.
Q. State to what extent you examined the goods there, the stock.
A. I looked it over?
Q. With reference to what?
A. To its value.
Q. Did you make an estimate of its value at that time?
A. In my own mind, yes, sir.
Q. Well, what was it?
A. I should say it was about ten thousand dollars, as near as I could judge without a careful inventory.
Q. But you had seen this stock of goods from time to time before that, hadn't you?
A. Yes, sir.
62 Q. And you looked it over then, that would be the 29th, with reference to ascertaining its value?
A. Yes, sir.
Q. You came to the conclusion that it was worth ten thousand dollars.
A. In the neighborhood of $10,000, yes, sir.
Q. That is, the stock irrespective of the fixtures?
A. Yes, sir.
Q. That is, irrespective of the safe?
A. Yes, sir.
Q. Did you examine anything that was in the safe at that time.
A. No, sir.
Q. And irrespective of the cases?
A. Irrespective of all the fixtures.

Cross-examination by Mr. O'BRIEN:

Q. You made this examination when?
A. The Saturday prior to the first of January; I think it was the 29th. I went to Chicago that night.

Q. What time of day was it?
A. It was along in the afternoon.
Q. You didn't see that stock again, did you?
A. No, sir.
Q. You didn't see how it looked on Monday?
A. No, sir; I was in Chicago at that time.
Q. What was your purpose in examining that stock, Mr. Wanner?
A. I had been requested to do so by the credit clerk of W. B. Clapp; his name I forget.

63 Q. You were doing it for the benefit of those parties?
A. Yes, sir.
Q. You were not a creditor of the concern, were you?
A. Yes, sir.
Q. Were you a creditor?
A. Yes, sir.
Q. Well, if you were then you are still, I presume?
A. Well, supposed to be; yes, sir.
Q. What is the amount of your claim?
A. Well, in the neighborhood of $500; I wouldn't say exactly to a dollar.
Q. How long were you examining this stock on this occasion; how much time did you devote to it?
A. About half an hour.
Q. Did you notice among that stock any diamond goods?
A. Yes, sir.
Q. Will you please state their character generally, rapidly.
A. Well, diamond rings and studs.
Q. Aggregating in value how much, in your opinion, that you saw there on that Saturday?
A. Well, I would venture to say, $1,500.
Q. Weren't there some diamond crosses there to?
A. I wouldn't be positive, sir.
Q. Those were in the show-case, were they not?
A. Yes, sir.
Q. Weren't there some diamond bracelets there?
A. No, sir; I think not, sir.
Q. This was in the afternoon of Saturday?
A. In the afternoon of Saturday.

64 Q. You know of the concern of Lapp & Flersheim of Chicago.
A. Yes, sir.
Q. Do you know their goods?
A. Oh, no, sir.
Q. You couldn't say whether you saw any of their goods or not?
A. No, sir.
Q. But there was about $1,500 worth of diamonds in the show-case?
A. Yes, sir; I should judge so.
Q. And that was Saturday afternoon?
A. Saturday afternoon.

A. N. MERRICK, sworn on behalf of the plaintiff, testified—

Examined by Mr. LEVI:

Q. Mr. Merrick, what is your business?
A. An attorney.
Q. Where do you reside?
A. Minneapolis.
Q. You are one of the firm of Merrick & Merrick?
A. I am.
Q. State, Mr Merrick, as briefly as you can, just what connection you and the members of your firm had with the bringing of the Purdy suit and the papers introduced here and the making of the assignment—the whole ground.

WITNESS: If the attorney won't object, I will say—

Mr. O'BRIEN: I won't object in chief if I am not objected to in cross-examination.

65 A. Some time about Christmas, I think it was, I don't remember the date, the Van Normans employed me to go to Chicago and see their creditors; not alone to Chicago, but was to go to Chicago, from Chicago to New York, and from New York to Boston and see their creditors for the purpose of making a compromise—for that specific purpose. I went to Chicago and was in Chicago two or three days, perhaps more, I don't know, but I found that it was impossible to effect any compromise. Clapp & Co., of Chicago, had already instituted a suit for some four thousand dollars; that suit was pending against the Van Normans. I came back; got home Sunday morning, the 30th, if I remember right.

Mr. LEVI: Where was that suit pending?

WITNESS: That suit was pending in the district court at Minneapolis.

Q. On a complaint filed?
A. On a complaint filed. In Monday morning's mail I had a letter from J. H. Purdy, of Chicago, enclosing a claim for $525, or $537 with a credit of $12, with instructions to commence a suit at once.

Objected to as not the best evidence.

Q. Have you that letter here?
A. I have not that letter here; it is at Minneapolis.
Q. Will you produce it?
A. I will produce it if I can find it.

Mr. O'BRIEN: That is the best evidence.

Q. Well, proceed and state what you did pursuant to any instructions.
A. Pursuant to instructions contained——

Objected to.

66 A. Pursuant to my instructions, then.

Objected to.

Mr. O'BRIEN: I don't like the expression "pursuant to my instructions."

A. Well, after having received the letter, I will say, then——

Mr. O'BRIEN: That is better, a good deal better.

A. I first gave the claim to my son and told him to present it to the Van Normans for payment——

Q. That is this young man?

A. Yes, sir; he returned with it; I learned that they could't pay it. I then drew the complaint, the affidavit for an attachment, and the papers in the case. They were given to my son, who took them to the court-house and obtained the writ of attachment. After he put it in the hands of the officer and went to the store, I went over to the store to see that he had possession of it and everything was correct. At his request I went to hunt the sheriff and relieve him so he could get some dinner, and that they could take such action as they saw fit with refereuce to the property. I did go to the court-house, but didn't find him. At seven o'clock—I think it was about seven o'clock—after the assignment papers had been filed and the bond had been approved, I went to the store with Bennett, the plaintiff in this case; went into the store; my son was with me. I was there when he presented the bond and made the statement to Mr. Stoddard and Mr. Peterson (who were standing close together). He stated to him that the Van Normans had made an assignment to him and that that assignment had been filed, and that he

67 had the bond in his hand, approved by Judge Young, and demanded the possession of that stock of goods and fixtures, and all the property in the store. And Mr. Peterson turned to Mr. Stoddard, and Mr. Stoddard said, "That's all right, they are entitled to it"; and Mr. Peterson said, "Then, I turn over this stock of goods and all this property, with the key, to you." Mr. Bennett took the key, and then he made the statement there that he was the assignee, duly qualified, and he demanded the entire possession and didn't want any interference with it. On the, I think it is the front showcase, near the front door, there was some watches in cases. I think the statement made there was that there was $1200 or $1300 worth of watches. Mr. Bennett went up and took those cases up, my recollection is, into his hands; at the same time, the gentleman named Moreland was figuring and handling goods away in back; I think he was working away at the plated ware. Mr. Ringwald was in there, and I have an impression that they had another man in there; they were making the goods fly around there pretty lively. Mr. Hopping was active in his efforts, and stating that he was the deputy United States marshal, and I think before I left Major Brackett appeared on the stage. Anyway, I then went away, leaving Mr. Bennett there in charge of the store, as he claimed to be. What occurred after that I don't know anything about. And the 2nd day of January, if I recollect right, I served a demand upon the marshal, Mr. H. R. Denny, the defendant in this action. He came to my office, and I served a copy of a writing.

68 Q. (Paper handed witness.) Look at that, Mr. Merrick, and see if that is the demand.

A. Yes, sir; that is the one; I gave him a copy of that demand, in the office. If you want his statement, I will give you that.

Paper marked exhibit "C."

WITNESS: He refused to deliver up the goods, saying he was a mere figure head in the matter.

Exhibit "C" offered in evidence by plaintiff's counsel.

Objected to as not being a demand on this defendant. This is a demand on the "United States marshal, for the district of Minnesota." No foundation laid.

WITNESS: I will state here that the marshal said he had the goods and the property.

Objection overruled.
Exception by defendant.
Recess until 2 o'clock p. m.

Afternoon Session.

A. N. MERRICK: Recalled as a witness for plaintiff, his direct examination continued as follows:

Examined by Mr. LEVI:

Q. I desire to ask you, Mr. Merrick, one more question: Mr. Merrick, state if you please, the character of your employment for the Van Normans, whether there was any general employment.
A. There was none; never.
Q. Was the employment, as you have stated, limited to this one thing.
69 A. Yes, sir; the one thing. It was paid in advance. It was concluded in Chicago, and I notified the parties in Chicago that nothing could be done.
Q. After that and after your arrival at home, you received the claim of Mr. Purdy?
A. Yes, sir.

Cross-examination by Mr. O'BRIEN:

Q. You were employed prior to all these matters—that is, prior to those actions, Mr. Merrick, as I understand it, your firm were employed in your professional capacity by the Van Normans to effect a compromise with their creditors?
A. If possible.
Q. In pursuance of that you proceeded to Chicago and made propositions to the creditors looking to a compromise?
A. Yes, sir; I saw most of the creditors in Chicago.
Q. In order to enable you to perform your duties in that manner that involved an examination of the condition—financial condition—of the Van Norman Bros., didn't it?
A. I didn't examine the financial condition.
Q. Well, you had to familiarize yourself with it from their standpoint.

A. If you will allow me to explain, I had nothing to do with it. I had placed in my hands an inventory of their property.

Q. You had to post yourself, from some source, of the con-
70 dition, of the assumed condition, of their standing, before you could go down and effect a compromise with the creditors?

A. I did—that is, I had it put in my hands. I didn't familiarize myself with it, but I had it——

Q. You had sufficient instructions to enable you to intelligently make that offer?

A. Well, I——

Q. The proposition of compromise was to take a less sum than the amount of their debt, wasn't it?

A. Yes, sir.

Q. And that, of course, would involve upon your part, a statement of their condition to the men that you proposed to make the compromise with?

A. Yes, sir; I took, if you will allow me, I took to the creditors in Chicago just the statement that was made out by the Van Normans. I made no statement except the statement that was furnished me.

Q. I am aware of that; but I say this statement constituted your instructions?

A. Well, they constituted the statements so far as assets and liabilities were concerned; but at that time the majority of the Van Normans' debts were not due, so far as the term of credit was concerned. I didn't examine with reference to that.

Q. You are aware now, from your general knowledge of the case, that a large proportion of their indebtedness was not due at that time.

A. Well, I don't know what proportion. I know that $4,000 had matured; that had matured, and that a suit had been brought
71 but I didn't know at that time (when I went to Chicago), I didn't know just what credit they had obtained—that is, the length of time.

Q. Well, it is the fact, now, is it not, that the term of credit for a large proportion of their indebtedness had not expired?

A. Well, I don't know; no, I don't know that; I knew that Lapp & Flershem—a portion, as I understood, became due very soon.

Q. When did you go to Chicago, as matter of fact?

A. Well, I think I left just a week previous to the 31st.

Q. The week previous to the 31st of December?

A. Yes; I think so; I won't be certain whether it was Monday or Tuesday.

Q. Well, I mean it was about that time?

A. I could tell you if I was at home.

Q. And during your absence in Chicago, that compromise was an offer of fifty cents on the dollar, wasn't it?

A. It is my recollection it was fifty cents on the dollar. And whether anything, I don't remember now—I have the paper though——

Q. And the instructions that you had were to the effect that unless

they got this compromise of fifty cents on a dollar they couldn't go on.

Objected to as improper; the counsel has no right to state what his instructions were without the consent of his client.

The COURT: I think he has stated enought in regard to it on direct examination to entitle the other side to cross-examine him. There may be some question about it.

72 Q. Did you not state in Chicago to the creditors there that they couldn't go on unless this compromise was effected?

Objected to.

The COURT: I don't think that is subject to the same objection.

Q. Didn't you?

A. I did. And I stated my reasons, and I will give you the reasons.

Q. I am not asking you for them; you made that statement?

A. I did.

Q. It was unquestionably a true statement when you made it, was it not, so far as you understood the case?

A. I have no doubt of it.

Q. Now, sir, is it not the fact that while you were in Chicago making those statements and seeking to effect a compromise at fifty cents on the dollar, that these men were purchasing goods in the market?

A. I don't know anything about it.

Objected to as incompetent and improper cross-examination.

The COURT: He says he don't know anything about it.

WITNESS: I don't know anything about it. I didn't know anything about the purchase of any goods of any one.

Q. Now, the offer of compromise failed, and you returned to Minneapolis, when?

A. I left Chicago the 29th, and arrived in Minneapolis Sunday morning the 30th, if I remember right,

Q. Did you see the Van Normans during Sunday?

73 A. I did not, neither of them.

Q. You saw neither one of them?

A. No, sir; didn't go down town.

Q. Did you see either one of them before this action, in favor of Purdy, was commenced?

A. I did not.

Q. Then, after your mission to Chicago failed, you came back, and without seeing either of those parties, you, on the morning of the 31st, commenced this action, or ordered it commenced, in behalf of Purdy.

A. I did.

Q. And in that action you made the affidavit for the writ of attachment?

A. I did.

Q. That affidavit states, as a ground of the attachment, that those persons were "about to assign, secrete, and dispose of their property, with intent to delay and defraud their creditors."

A. That is my affidavit.

Q. Upon what condition of facts within your knowledge did you make that affidavit concerning those men, in whose employment you went to Chicago to effect a compromise with their creditors at fifty cents on the dollar.

Objected to as incompetent, irrelevant, immaterial, and not proper cross-examination.

The COURT: I have a good deal of doubt whether it is material; however, I think I will allow it at present.

Plaintiff's counsel excepted to the ruling.

74 Q. Upon what facts did you predicate your affidavit made on the 31st day of December, that those men were about to—

A. I predicated it on the facts stated to me by Mr. ——, the Chicago man, what is his name?

Q. Purdy?

A. Mr. Purdy.

Q. Those were contained in that letter that you have not produced?

A. The facts were contained in a statement made to me on Saturday morning, the 29th day of December, as I left Chicago, just as I was starting on the train—conversation with Mr. Purdy.

And then you acting as the attorney of the Van Normans, going down to visit Mr, Purdy for the purpose of obtaining a compromise with those men at fifty cents on a dollar, coming from your home in Minneapolis—

A. Yes, sir.

Q. Went down there, and without reporting to them, procured the facts of this affidavit; that they were about to dispose of their property with intent to defraud their creditors, in a statement made in Chicago by one of the creditors you went down to compromise with?

Mr. LEVI: That is objected to; the witness testified, as I understood him, that he telegraphed the Van Normans after he had found out in Chicago that he could do nothing with reference to this compromise, telegraphed them at once the result, and that the matter had terminated.

WITNESS: I said I reported from Chicago to them.

75 Q. I will put my question in this way: After your employment by these men and going down and trying to get those creditors to compromise at fifty cents on the dollar, without seeing your clients you came back and issued this writ of attachment, and swore that these men, who had been at least your own clients, were about to secrete and dispose of their property with intent to hinder, delay and defraud their creditors on a statement that one of those creditors had made to you in Chicago, on the 29th?

Objected to as not cross-examination, incompetent, irrelevant and immaterial.

The COURT: That may involve a question of legal ethics, but I doubt whether it affects this case one way or the other; if he did, I think I will sustain the objection.

Defendant's counsel excepted to the ruling.

Q. Did you have any other information excepting what Mr. Purdy gave you?

Same objection as last before.

Objection overruled and plaintiff excepted.

A. I had no other information only Purdy's statement and the grounds for his belief, which was the statement embodied in the affidavit.

Q. Did you believe Mr. Purdy's statement?

A. I had no reason to disbelieve it; I knew nothing about it.

Q. How soon after this Purdy action was commenced was this assignment begun to be drawn?

A. Well, that I don't know, Mr. O'Brien, for I wasn't there when Mr. Van Norman—I think Mr. Bennett came in—I wasn't there when they came in.

Q. Who did draw this assignment, as a matter of fact?

A. My son.

76 Q. I understood him on yesterday that he did not.

A. No, sir; I didn't draw it; I wasn't there when they came in.

Q. Did you know that there was an assignment about to be made or have any belief about the matter?

A. I didn't until I came in, and I think when I came in, the assignment was partly drawn.

Q. You had no idea, when this action was commenced, that the result of it would be an assignment?

A. I don't say that; I don't say that I hadn't any idea.

Q. That is what I want to know.

Same objection and exception to all this testimony by plaintiff's counsel.

A. I could say that, by reason of the suit on the Clapp goods, which would come into demand in a few days, that it had got to come to that point.

Q. Then you knew that an assignment was to be made?

A. I didn't know it; no, sir.

Q. You believed it would come to that point?

A. I believed it ultimately would have to come to that point.

Q. Didn't you believe and understand that the assignment would be made just as soon as this attachment was made?

A. I didn't know anything about it; I hadn't seen the parties at all.

Q. You didn't expect to act for the Van Normans?

A. I had no reason to believe that I should act for them.

77 Q. You was entirely surprised?

A. I wasn't surprised, for I knew nothing about it. I hadn't seen them or talked with them or had anything to do with them. I had notified them that the matter was at an end, in Chicago.

Q. You knew that a writ of attachment or a new process was necessary before they could make an assignment which would release their creditors?

A. Well, I knew the provisions of the law.

Q. And you also believed, when you drew this writ of attachment, that the result would be in an assignment?

A. Well, I could say that it would, in my opinion, ultimately result in probably either voluntary or involuntary proceedings under that assignment law. I didn't see how it could be otherwise.

Q. That was your idea?

A. Yes, sir.

Q. Have you procured the letter of instructions from Mr. Purdy?

A. I have not been home, sir.

Q. Do you intend to produce it?

A. I will to night, sir; if you want me to look, if I can find them.

Q. I want the letter accompanying that claim of Purdy's.

A. I will look for it.

Q. Well, you keep your letters, don't you?

A. We have had a great many letters.

Q. That was your letter containing your instructions in relation to this suit?

78 A. Yes, sir; I think so.

Q. It was upon that, and that alone, that you were instructed to bring it?

A. No, sir; not that entirely.

Q. I understood you to say that your instructions concerning this suit, were included in a letter received by you in which this claim was sent?

A. The claim was received by letter Monday morning, and in that letter I think were instructions. I will also say that on Saturday morning, the 29th, after I had got through in Chicago, and a day or a day and a half after I had notified the parties that we could do nothing, I saw Mr. Purdy as I was going to the depot, and he said to me, "I have just got information from Minneapolis, informing me that the Van Normans are endeavoring, or about to dispose of their entire stock of goods, and if so, they leave town." He says, "If I find that verified to-day, or my suspicions, (I am going to inquire from the other parties here who have telegrams,) I shall send the claim up there and have an attachment put on and hold that stock of goods."

Q. When were you retained by Purdy & Co.?

A. Well, sir, the first letter that came from him was on Monday, unless you construe his speaking to me in that way that I was to look after that claim.

Q. Well, I don't know if I could charge a man up a fee for saying that.

A. He paid us for the attachment and all the proceedings.

Q. That was afterwards, wasn't it?

79 A. I don't remember the time when it was.

Q. Now, at that very time you were under retainer of some hundreds of dollars from those Van Normans, weren't you?

A. I had notified them from Chicago previous to that that I had got through, that my mission was fulfilled. I could do no more for them and stated my reasons—that Lapp & Flershem, whom you represent, declined to do anything. I had acted also with the advice of one of the largest creditors of the concern, who had told me that it was absolutely impossible for me to do anything in Chicago; that was Clapp & Co. I then notified them by letter, and I think by telegram. Mr. Purdy did say that he wanted to protect not only his claim, but he wanted to protect all the creditors in that conversation.

Q. Have any further steps been taken in this suit of Purdy *vs.* Van Normans? Have you ever entered judgment there?

A. No, sir; we have not. Mr. Purdy gave us directions that he would prove his claim.

Q. I think you better leave Mr. Purdy out for a while, he is in Chicago now.

A. No; he has been here three times since that.

Q. He is not a witness in this case?

A. He directed us to go no farther with it, but that he should prove his claim against the estate.

Q. You are still the attorney of the Van Normans in the case in the circuit court; appeared for them there and defending the action?

A. No, sir; I am not attorney; have never been paid a

80 cent by them, except for going to Chicago. I filed an answer there to protect the assignment.

Q. You moved to dissolve the attachment, didn't you?

A. If you will allow me one thing at a time I will tell you just how it is.

Q. Do you mean to say you are not the record attorneys of the Van Normans in this case in the United States circuit court?

A. I mean to say Lapp & Flershem obtained an attachment, and——

Q. The question is, do you say you are not now the record attorneys of the Van Normans in the case of Lapp & Flershem against them in the circuit court?

A. I do say that I am, and appeared there at the suggestion of the assignee.

Q. Always have been, haven't you?

A. I didn't know that there had been any substitution.

Q. No, sir; there has not. It is also true that you have always been the attorney of the assignee?

A. Yes, sir.

Q. Then, the interregnum of your relations as attorney of the

Van Normans must have been that 45 minutes between the time you were drawing this writ of attachment and the assignment?

A. I don't know what you mean by that.

Q. I mean to say you went to Chicago on their behalf, you got back on Sunday, and on Monday morning at 12 o'clock commenced drawing the writ of attachment, and by a quarter of one you were drawing the assignment for them.

81 A. I didn't say so.

Q. Well, that is the fact, isn't it?

A. I don't know; I told you I didn't know the time they came in the office. I say this much, that since I came back from Chicago, and after I got through with the work I was specially employed to to do or to attempt to do, they have not paid us one single cent; we haven't made them a charge of one single cent—never expect anything from them; and that the answer in the United States circuit court was at the suggestion of the assignee, on the ground that the claim of Lapp & Flersham wasn't due at the time the suit was brought, nor wouldn't be due for some months; that is what I mean to say.

Re-direct examination, by Mr. LEVI:

Q. I want to ask you one question in that case, as to who employed you and who paid you for drawing this assignment, whether Van Norman or not?

A. The Van Normans didn't.

Q. Who did?

A. Mr. Bennett.

Q. And your action in the United States court was at his request?

A. At his suggestion and his request.

Q. You have made no charge to the Van Normans for that?

A. No, sir; not one cent, nor received one cent, nor never expect one cent from them.

82 N. P. LILLINGREN, sworn for the plaintiffs, testified—

Examined by Mr. MERRICK:

Q. What is your full name?

A. Nels P. Lillingren.

Q. Where do you live?

A. In Minneapolis.

Q. What is your business?

A. Furniture manufacturing.

Q. What business were you engaged in in December, 1883, and October, and September and November?

A. In the furniture manufacturing.

Q. In Minneapolis?

A. Yes, sir.

Q. Do you know the firm of Van Norman Bros.

A. I do.

Q. Do you know what fixtures they had in their store on the 31st day of December, A. D. 1883?

A. Yes, sir.
Q. State what they were.

(Looks at memorandum.)

Mr. O'BRIEN: What paper is that?

A. Just the names of the furniture. There were two 12-feet counters made of cherry wood and stained in mahogany.
Q. What next?
A. One 6-foot 7-inch counter, same material; one window show-case; two upright show-cases or wall-cases, same material; one watchmaker's desk; three shelves for clocks; one watch-
83 maker's wall-case; two 12-foot show-cases, plate glass and silver balls; one about six feet, fine plate glass, silver bar show-case.
Q. Did you manufacture any portion of that?
A. I did.
Q. What portion?
A. All the wood-work, and I furnished the glassware and trimmings.
Q. Are you acquainted with the value of that kind of work?
A. Yes, sir; I am.
Q. And the value of those articles enumerated?
A. Yes, sir.
Q. What time did you put them in there?
A. I put them in there on the 19th day of October.
Q. Had you seen them often from the time you put them in until the store was closed?
A. Yes, sir; at least most every day or sometimes two or three times a day.
Q. Now, will you give us a fair value of those articles on the 31st day of December?
A. Yes, sir. The counters, the actual fair value, seven dollars per running foot, which will amount to $180 for the two 12-feet counters; and the one 6-feet 7-inches amounted to $49.84; one window show-case, amount, $69; two upright wall-cases, for each $185, makes $370; one watchmaker's desk, $45; three shelves used for clocks, $14.50; one watchmaker's wall-case, $16. That is the furniture that I manufactured.
Q. Making a total?
A. Making a total of $743.84.
84 Q. What else was the value that you was acquainted with?
A. There were two glass show-cases of French plate glass and silver balls, two 12-feet long, to my knowledge, $145 apiece, making $290; and one about six to seven feet, $85, it would amount to $375.
Q. Making the total, what?
A. Making whole the total $1,118.84.
Q. That would be a fair value at that time?
A. That would be a fair value—elegant, fine work; for the best work put in Minneapolis. I have been manufacturing there for

eight years, and have put in a great portion of the fixtures in Minneapolis.

Q. And you know what the value is?

A. Yes, sir.

Q. Do you remember what other fixtures there were there in that front room?

A. There was a large safe; very elegant fine safe.

Q. Will you describe it?

A. Well, so near as I can recollect, (I never took any rule to measure it). As near as I can recollect, it would be about four feet and eight to ten inches wide and about five feet high. The inside work was very elegantly finished of the finest description that I ever saw in a safe in Minneapolis.

Q. Was it a fire and burglar proof safe?

A. Yes, sir; it was.

Q. Have you any idea what that was worth?

A. I heard a conversation with an agent opposite from the
85 firm that that safe came from, was in there at the time I worked there putting in the fixtures; he came in there and asked Mr. Van Norman how much he paid for the safe; Mr. Van Norman said: "How much do you suppose?" "Well," he said, "between six and seven hundred dollars he must have paid for it;" and about the reply I didn't hear the answer.

Mr. O'BRIEN: That is not competent; I move to strike that out.

Q. Well, were there any stoves there?

A. Yes, sir; there was a large coal stove.

Q. New or old.

A. New—perfectly new; I was there the day it was put in.

Cross-examination by Mr. O'BRIEN:

Q. What was the value of the work you did there?

A. The value of the work I did there was $743.84.

Q. That is the same price you are putting on these goods, isn't it?

A. Yes, sir; that was the value of the work at the time, the actual value at the time, 31st day of December.

Q. You are putting the values, the actual prices got for those goods?

A. No, sir; I did not.

Q. What would it cost, do you know what they cost?

A. I can't recolloct, just exactly up to the dollar and cents, what they did cost.

Q. But your prices are just about the cost of them, aren't they?

86 A. The prices are not given so much as the cost of them.

Q. They were made for a special purpose, and were in use three months?

A. They were not used quite three months.

Q. Well, nearly three months; the Van Normans paid you on the 21st of December, didn't they, the balance of your bill?

A. Well, that I don't recollect.

Q. Weren't you paid $399.75 on the 21st of December, the balance of your bill.
A. I have no recollection what day it was.
Q. You got your pay just before they broke up?
A. No; they were not all paid.
Q. How much is there due you?
A. Well, there was one note of $50, I don't know whether that is paid or not.
Q. That is all you can remember?
A. Yes, sir.
Q. You don't seem to have lost anything by this failure?
A. Well, those fifty dollars I haven't heard anything of.
Q. You don't know whether you will lose it or not?
A. No; I don't know whether I will lose it or not.

CHARLES C. BENNETT: Sworn and examined on his own behalf, testified—

Direct examination, by Mr. MERRICK:

Q. What is your full name?
87 A. Charles C. Bennett.
Q. Do you live in Minneapolis?
A. I do.
Q. How long have you lived there?
A. About six or seven years.
Q. All the time?
A. Yes, sir.
Q. You lived there on the 31st day of December last?
A. I did.
Q. A citizen of Minneapolis?
A. Yes, sir.
Q. Are you a freeholder of the State of Minnesota?
A. Yes, sir.
Q. At that time?
A. Yes, sir.
Q. Do you know the Van Norman Bros.?
A. I do.
Q. And you are the plaintiff in this action?
A. I am.
Q. And the assignee of the Van Normans?
A. I am.
Q. On the 31st day of December what time was that assignment delivered to you?
A. About half past two or thereabouts.
Q. Who delivered it to you?
A. The Van Norman Bros.
Q. You accepted the trust in writing?
A. I did.
Q. Then and there. Now, what next was done; that was filed, wasn't it?
88 A. Yes, sir; it was filed.

Q. You executed the bond, did you?
A. I did.
Q. As has been stated here, after that had been filed and you had the bond executed and approved, what did you do and where did you go?
A. I went to the store of the Van Norman Bros.
Q. About what time, now?
A. I would say somewhere around seven o'clock in the evening; it may have been a few minutes later; I might say about seven o'clock in the evening or maybe a few minutes later.
Q. Before the assignment was drawn you was notified of the attachment, was you?
A. I was.
Q. By whom?
A. By the older brother of the Van Normans.
Q. Axel?
A. Yes, sir.
Q. And about what time was that?
A. That was about one o'clock in the day; somewhere thereabout.
Q. Then, what did you do with him?
A. I advised him to go and see an attorney; see what he could do in the matter.
Q. Did you go with him?
A. I did.
Q. You came up to the office of Merrick & Merrick, didn't you?
A. I did.
89 Q. Who was there?
A. Mr. Merrick, Jr.
Q. The young man?
A. Yes, sir.
Q. Who employed the Merricks to draw that paper? Who spoke to them about it?
A. Mr. Van Norman did; to draw the paper.
Q. At whose suggestion?
A. At my suggestion.

Mr. O'BRIEN: Oh, I object to that.
The COURT: On the ground it is leading.
Mr. O'BRIEN: No, sir; I object to the question as immaterial.
The COURT: The question was asked and answered.

Objection withdrawn.

Q. The assignment was drawn there by the young man?
A. Yes, sir.
Q. You say that you went back after you got the bond, about seven o'clock.
A. I did.
Q. Now, tell the jury what you did and who you found there and what was done.
A. I went to the store of the Van Norman Bros. about seven o'clock with young Mr. Merrick and I believe Mr. Merrick, Sr., and when

I got to the store I found the sheriff of Hennepin county or his deputy in possession.

Mr. O'BRIEN: Now, I move to strike out that word "in possession;" it is not the fact, it is the conclusion of the witness.

90 Mr. LEVI: All we claim is that he was in the actual possession, and whether he was in actual possession is a question of fact, and the witness can certainly testify as to that.

The COURT: There is considerable doubt in my mind whether he intends to state the fact or his conclusion. It appears here that there was several people there, two or three people claiming to be in possession. I think it is better for him to state just what the physical circumstances were there.

Q. Well, go on and state who you found there and all that occurred.

A. The reason why I say that——

The COURT: Answer the question.

Q. Just state who you found in there.

A. I found John Peterson there when I came in.

Q. Who is John Peterson?

A. That was the deputy sheriff of Hennepin county; and being personally known to me as such, I believed that he was in possession.

Mr. O'BRIEN: Now, I move to strike that out.

The COURT: It may be stricken out; just state the fact.

Q. Now, you may state what he was doing there.

A. After I came in I demanded the surrender of the property and the place, whereupon——

Q. Wait a moment. Who did you address; did you show them anything; and if so, what?

A. I showed the deputy sheriff my authority which I had

91 got from the court and the approval of the bond, which I produced, and demanded the surrender of the property.

Q. What property?

A. The stock of jewelry, fixtures, and everything there in the place.

Q. What, about the store?

A. And about the store, in the store.

Q. Whom did you make it of?

A. I demanded it of the sheriff of Hennepin county.

Q. Was he there then?

A. He was.

Q. This Mr. Stoddard?

A. Yes, sir; both him and his deputy.

Q. Standing together?

A. Yes, sir.

Q. Well what was done?

A. Whereupon the sheriff said it was all right, and his deputy thereupon turned over to me the property and particularly some

watches laying upon the show-case, which I took at the same time and opened the show-case and was going to put them in there. Also I received the key of the store.

Q. State if you made any announcement there of your appointment as assignee and qualification as such.

A. I did. I announced in as good a voice as I could that I was the duly appointed assignee of that estate, and I demanded that they immediately surrender everything that was there.

Q. You say that these watches that you speak of were on the counter?

92 A. Yes, sir.

Q. Well, were they loose or in cases?

A. They were in sort of trays laying in place together in a sort of heap on the center of the show-case.

Q. Towards the door?

A. Near the door—not quite. About the center of the show-case; and I removed them further to the end of the show-case.

Q. Then what did you with them?

A. I tried to put them in further and into the show-case, and I was interfered with by some parties there.

Q. Who?

A. Mr. Ringwald, I believe his name is, the gentleman sitting there behind Mr. O'Brien.

Q. Well, go on now and state what occurred, how long you staid there, and what was done to you.

A. I staid there until, probably, between eleven and twelve o'clock, when I was forcibly ejected by Mr. Hopping.

Q. Mr. Hopping?

A. Yes, sir.

Q. Well, state to the jury how you went out; whether it was your own will, or whether you went out against your will?

A. No, sir; I went against my own will. I was shoved out between the counters, out on the floor and towards the door.

Q. Did they tell you under what authority they were putting you out?

A. No, sir; they said they had no further use for me.

Q. What did they do with the goods?

93 A. Well, I believe they called it all around.

Q. What did they do with the door? Lock it when they put you out?

A. I believe they did.

Q. And they remained in possession?

A. Yes, sir.

Q. Now, who were the parties that were in there with Gus. Hopping?

A. It was Mr. Ringwald, and this gentleman sitting there,——

Q. Mr. Moreland.

A. Mr. Moreland and Major Brackett, I believe, and I believe there was another party.

Q. You believe they had another one there?

A. Yes; that I didn't know.

Q. What were they doing in there?

A. Well, in the early part of the evening they were all standing around there; Mr. Moreland was handling some goods inside the counter, and Mr. Ringwald was marking down the goods on paper; taking sort of an inventory.

Q. What, if anything, was said by Mr. Hopping or Major Brackett, about their having any writ or process?

A. Never showed me any.

Q. Did they say anything about it?

A. No, sir.

Q. Made no announcement to you?

A. No, sir.

Q. When Mr. Peterson surrendered to you the property and gave you the key, what did he say, any words?

94 A. As far as I remember, he said that after I had showed the sheriff the paper and he said it was all right, and I believe it was upon his instructions that Mr. Peterson surrendered to me.

Q. In surrendering to you what did Mr. Peterson say?

A. He said: "I'll give up what I have taken, and here it is, and here's the key to the store," pointing out the watches on the show-case.

Q. Were you at all acquainted with this stock of goods?

A. I was, somewhat.

Q. How frequently had you seen it?

A. Oh, I had seen it for the last fortnight, I believe nearly every day.

Q. You made an inventory of the stock of goods on or about the 24th, didn't you?

A. Yes, sir.

Q. Well, state how careful an inventory.

A. I made an inventory with Axel Van Norman, and we went through the stock pretty carefully, as I think, counted up every item there was there, and we made the inventory very low, and a great many things were omitted what was there in the place—small items.

Q. That was on the 24th?

A. Yes, sir.

Q. Do you know what that inventory footed up at?

A. Somewhere in the neighborhood of $10,500.

Q. At that time?

A. Yes, sir.

95 Q. Between that time and the 31st day of December have you any knowledge of the Van Normans receiving goods?

A. I have.

Q. To what amont or extent, could you state?

A. I couldn't say exactly to the figures, but in the neighborhood of two or three thousand dollars.

Q. Are you acquainted with the value of jewelry somewhat?

A. Somewhat, yes, sir.

Q. Have you been in the habit of going in there evenings on your way home?

A. Yes, sir.
Q. Did you know anything about the sales?
A. I do, somewhat.
Q. From time to time?
A. Yes, sir.
Q. And you went over this with Mr. Axel Van Norman for the purpose of determining its value about that time?
A. Yes, sir.
Q. Listing it at low prices?
A. Yes, sir.
Q. Now, did you see this stock of goods on the 29th—that is, the Saturday preceding the assignment?
A. I did, sir.
Q. Did you look over the stock?
A. Yes, sir.
Q. And knew something of what there was there?
A. It was the same appearance of goods as a week previous; I couldn't see any difference in the stock.
Q. How did it appear that night?
96 A. Everything was full what was in the cases and in the little trays; everything was full of goods.
Q. Did you see this, Monday, the 31st?
A. I did.
Q. What was its appearance then?
A. The same as on Saturday.
Q. About what time on Monday?
A. I believe about nine o'clock in the morning; somewhere thereabout.
Q. Can you tell about what the value of that stock of goods was on Monday?
A. Well, I would judge between $9,000 and $10,000 of goods.
Q. Well, in that estimate, now, do you include the fixtures and the safe?
A. No; I would only say the stock.
Q. Well, basing upon a cost price, upon a fair valuation, as it stood there in the store, or upon what the goods cost, how did you estimate it?
A. Well, I made my estimate pretty low, according to since the day I took the stock.
Q. You think between $9,000 and $10,000?
A. I think there was fully between $9,000 and $10,000 worth of that stock.
Q. That was at nine o'clock on the 31st?
A. Yes, sir.
Q. Now, between 9 o'clock the 31st and the time the sheriff went in, which was about noon, did you see it again?
A. No, sir; I didn't see it.
97 Q. You didn't see it after that?
A. No, sir.
Q. Have you seen the stock of goods since it was taken away?
A. No, sir; I haven't.

Q. You haven't seen it?
A. A part of it I have.
Q. Some of it was left there?
A. Yes, sir.
Q. Some of it Hopping left?
A. Yes, sir; he forgot it.
Q. Now, where was Axel Van Norman the morning and forenoon of the 31st, if you know?
A. He was into my place of business about nine o'clock in the morning.
Q. How long did he remain there?
A. He went from his store over to my place, and that was somewhere about nine o'clock, and he remained there probably an hour or an hour and a half that morning.
Q. Where did he go to from your place?
A. I couldn't say where he went to.
Q. Well, how long before you saw him again?
A. He came back towards noon the same day.
Q. Do you know where he was the Sunday preceding?
A. He was with me at my place in the morning for maybe two hours, or two hours and a half, on Sunday morning.
Q. Do you remember what the fixtures were there?
A. Yes, sir.
98 Q. Then briefly describe them. Do you know about their value?
A. I don't know exactly the value, but I have a good idea of it. There was two very large wall cases; there was three standing cases with show cases on top of it; there was one window case; there was a fine table, a large coal stove, carpets, two chairs, nice gas fixtures, and some very nice irons there.
Q. Well, was there a stove there?
A. Yes, sir.
Q. Do you know about the value of that stove?
A. Well, the stove was worth, with the pipes, etc., between sixty and seventy dollars.
Q. Was it new?
A. Yes, sir; it was new.
Q. Well, was there any safe there?
A. There was a very fine safe, I think about five feet high, with double doors, and made expressly for the jewelry business; very handsomely finished inside, with drawers in plush, and all made to hold jewelry.
Q. What was the fair value of that?
A. I would judge the safe was worth about six hundred dollars.
Q. Now, in the back room—there was a little work-room, wasn't there, at the rear?
A. Yes, sir.
Q. What was there in there?
A. There was two rooms, in fact; there was one small room used by Mr. Van Norman as sort of sleeping-room; there was a bed
99 and two small tables, some chairs, and some of his wearing ap-

parel in the back room; it was fitted up for a workshop; there was two stoves in it and tools and a work bench, etc.

Q. Were there any articles hanging up about the room?

A. There was a good many articles there, I believe, belonging to private parties, such as repairs, clocks, and old watches and things; that is all.

Q. Let me call your attention to whether there was a robe there.

A. There was a fur robe on the bed; yes.

Q. Do you know the value of that?

A. Worth about $25.

Q. What else?

A. There was a gun that belonged to myself.

Q. That was taken too, was it?

A. Yes, sir.

Mr. O'BRIEN: I move to strike that out.

Mr. MERRICK: Well, I didn't make any claim for that.

Motion to strike out withdrawn.

Q. Was there any other property that you remember of being in that room? The property of the Van Normans—that is what I mean.

A. That is about all I can remember.

Q. Now, let's go back a little bit. The watches that were laid out in the trays there, the deputy sheriff pointed to you, which you took possession of—do you know how much there was in value of those?

A. I do not.

100 Q. Do you know how many watches there were aside from those that were put there, about?

A. There was several watches left in the case; how many there was I couldn't say.

Q. I would ask you now if you know anything about there being two valuable watches—very valuable watches—there, and when you saw them?

A. I saw them on Saturday.

Q. Do you know what priced watches they were?

A. I don't understand exactly the value of those, but I——

Q. I didn't know but what they were priced.

Mr. O'BRIEN: I want to ask counsel if he claims those watches?

Mr. MERRICK: Yes, sir; you said they were ours.

Mr. O'BRIEN: The same assignee has caused another action to be instituted by a private individual for those watches.

Mr. MERRICK: We deny that; there is no sort of truth in it.

The COURT: It isn't here now, at any rate.

Q. Have you authorized any suit against the marshal?

A. No, sir.

Q. Except this one?

A. Except this one.

Q. You have authorized but this one suit, you have?

A. Yes, sir.

Q. Now I will ask you when you last saw those watches?

A. I saw them on Saturday.

101 Q. Where were they then?

A. They were in a small box, and Mr. Van Norman showed them to me.

Q. They were the Herzog watches?

A. They were sent by Mr. Herzog.

Q. From New York?

A. Yes, sir.

Q. Chronometers, weren't they?

A. Yes, sir; one worth $350 and the other $275.

Q. You saw them, then, Saturday night?

A. Yes, sir.

Q. What time?

A. I saw them there, I think, between nine and ten o'clock.

Q. Did you see them after that?

A. No, sir; I did not.

Q. And Monday, when you was in there, you didn't look in the safe at all?

A. I did not.

Q. And you don't know what there was there?

A. No, sir; I do not.

Q. You spoke of there being certain property left behind in Minneapolis by Mr. Hopping; will you state what that was—of fixtures or what?

A. There was some fixtures; yes, sir. There was a regulating clock, a piece of carpet, gas fixtures, and small silver tray.

Q. You mean silver-plated.

A. Yes; silver-plated.

Q. The regulator complete?

102 A. No, sir; it is not.

Q. What is gone?

A. The quicksilver.

Q. Do you know what the value of those articles are as they are now, or as they were when you received them—the value of the regulator?

A. Yes, sir; about.

Q. Well, about what were they?

A. It is worth about, I should think, about $60 to $70.

Q. The regulator?

A. Now, as it is; yes, sir.

Q. And the carpet and the——

A. The carpet is worth about $10.

Q. And the gas fixtures?

A. The gas fixtures about $20.

Q. So those are all the articles that you have ever received as assignee?

A. Yes, sir; that is all.

Q. Those you have?

A. Yes, sir.

Q. Well, I mean those you got possession of—I don't mean those articles you received in the store, but those you got possession of?

A. I got possession of them ; yes, sir.

Q. As I understand you, you did have possession of this property in the store?

A. Yes, sir.

Q. But what I mean is, was this all that you now have in your possession—was these articles?

A. Yes, sir.

103 Q. Well, this property; you don't know how long it was kept by the marshal in the store—the property that was taken from you in the store? It was probably kept there about a week, pretty near?

A. I think so; five or six days.

Q. You authorized the demand to be made upon the marshal, did you?

A. I did.

Q. And the commencement of the suit?

A. Yes, sir.

Cross-examination by Mr. O'BRIEN:

Q. What did I understand your general business to be, Mr. Bennet?

A. I am a fur manufacturer.

Q. Well, how long have you been engaged in that business in Minneapolis?

A. Six or seven years.

Q. You seemed to have been pretty intimate with the Van Normans. Were you a special friend of their's?

A. I was.

Q. They used to consult you in their matters, I presume?

A. They did.

Q. When did you agree to become their assignee?

A. On the 31st day of December.

104 Q. You hadn't made any agreement of that kind before?

A. No, sir.

Q. You didn't know that they were going to have an assignee before and make an assignment?

A. No, sir.

Q. Never spoken of between you?

A. No, sir.

Q. You were not aware of the fact that they were in business difficulties and Mr. Merrick had gone East to fix up their difficulties at fifty cents on the dollar?

A. I was.

Q. You didn't expect that to be followed by an assignment?

A. Probably I was thinking it would follow.

Q. But there was no conversation or talk between you about the matter before?

A. There was not.

Q. What did you make that inventory for on the 24th of December?

A. I made it because Mr. Van Norman came to me on or about

the 17th of December and told me how he was situated, and I asked him then how much stock he had. He said he didn't know. I said, Well, wouldn't it be well for you to find out? He says, Yes. Well, I say, I haven't time. He asked me then to go over with him and take an inventory. I told him I hadn't time. But a little later on then I went with him; that was on the 24th day of December.

Q. You made the inventory, then, you say, and found there was between nine and ten thousand dollars?

105 A. At a low calculation.

Q. Then I understood you to say that he received some four or five thousand dollars' worth of goods additional between that and the 31st?

A. He did.

Q. He did get in some four or five thousand dollars' worth of goods, then, while his attorney was down negotiating this compromise?

A. He had all the goods previous to that time.

Q. You seem to be pretty familiar with that business?

A. Well, I was.

Q. Well, the goods came in and were put right into the stock and went right along there, and if you had got hold of them they would have gone into the assignment, wouldn't they, four or five thousand dollars' worth of new goods, between the 24th of December and the 31st?

A. No, sir.

Mr. MERRICK: He said two or three thousand dollars.

The COURT: That is what he said on his direct examination.

Mr. O'BRIEN: He said four or five on his cross-examination.

Q. You say you are a freeholder of this State?

A. Yes, sir.

Q. What property did you own in this State on the 31st of December?

A. Yes, sir.

Q. What?

106 A. I owned two lots out in Highland Park.

Q. Are you deed of record to them?

A. Yes, sir.

Q. The deed was recorded on the 31st?

A. On what day?

Q. Was the deed of record on the 31st?

A. No, sir; it was not.

Q. When did you record the deed?

A. I believe some time in August, this year.

Q. Had you any real estate that stood in your name on the records on the 31st of December?

Objected to as immaterial, not cross-examination, and the question whether he was a freeholder on the 31st of December.

The COURT: I think it is proper cross-examination.

Q. Did you have any property in your name of record in this State on the 31st of December last?

A. I had.

Q. Of record; did you have any property of record?

A. I don't understand your question.

Q. Did you have any deeds to any property recorded; were they in the register of deeds' office in this State anywhere on the 31st of December?

A. I think I had.

Same objection.

Q. Where was it; what property was it?

A. Property I am living on now.

Q. Is that the Highland Park property?

A. No, sir; it is where I live now.

107 Q. When did you buy that?

A. I bought it about two years ago.

Q. When did you get your deed for it?

A. I got it about that time.

Q. Does it stand in your name on the record ever since you bought it? Is your deed in the register's office—recorded there?

A. I think it is.

Q. Well, don't you know?

A. No; I am not aware of it myself, but I think it is.

Q. Your name is Charles C. Bennett?

A. Yes, sir.

Q. Do you know the number or description of the lot?

A. Of the lot I am living on?

Q. Yes, sir.

A. Yes, sir.

Q. What is it?

A. It is lot 8, Headerley's addition to Minneapolis.

Q. What is the block?

A. I don't remember the block.

Q. Now, you say that this assignment was commenced to be drawn, when?

A. That was drawn on the 31st day.

Q. Tell me the hour of the day.

A. The assignment?

Q. Yes, sir.

A. It was drawn up somewhere, I believe, by 2 o'clock. I believe somewhere thereabout.

Q. When did they commence to draw it up?

A. Right after—I believe near the hour of 1 o'clock. They

108 started it near the hour of 1 o'clock.

Q. Did you execute it at the same time the Van Normans did; did you sign it at the same time they did?

A. I did.

Q. Did you file that assignment yourself?

Objected to as incompetent, immaterial, and not cross-examination, and not the best evidence.

The COURT: I will allow the question without determining all the questions.

(Exception by plaintiff.)

A. I did not, sir.
Q. Who did?
A. As far as I understand, young Mr. Merrick did it.
Q. Do you know where he gave it to the clerk?
A. I do not.
Q. You say you got it from the Van Normans—you say the Van Normans delivered it to you?
A. Yes, sir.
Q. What did you do with it?
A. I gave it to Mr. Merrick.
Q. When?
A. Right there and then.
Q. What time was that?
A. About 2 o'clock, I should think, or half past 2.
Q. Where did you go then?
A. I went with Mr. Merrick out to get my bond.
Q. The same Mr. Merrick that you gave the assignment to?
A. Yes, sir.
Q. How long did you stay with him?
109 A. I stayed probably an hour and a half.
Q. Now, you don't know when that assignment was filed at all, do you?
A. I do not.
Q. Yet you stated in the examination it was filed at 7 o'clock that evening?
A. No, sir; I did not.
Q. Now, when you went into that store to undertake to make your demand for those goods you don't know whether that assignment had ever been filed or not, do you?
A. I got those papers from Mr. Merrick.
Q. I am talking about the filing of the assignment; when you went in to undertake to demand possession of this stock you don't know whether the assignment was filed or not?
A. I saw the judge's signature underneath.
Q. On the assignment?
A. Yes, sir.

Objected to.

The COURT: I don't think this question is material in any event.

Q. Did you have any other paper with you at the time you went there excepting this bond?
A. I believe I had. (Same objection.) I had two or three, I believe.
Q. What did you have?
A. Well, I had a bond—I believe it was a bond—and a paper from the court showing that I was authorized as an assignee.

110 Q. You had two or three papers?
A. I had.
Q. You don't know what they were?
A. I looked at them and found that one was the bond.
Q. That was the bond that was approved by the judge?
A. Yes, sir.
Q. When was that approved?
A. By Judge Young.
Q. Did you get him to approve it?
A. No, sir.
Q. Do you know when it was approved?
A. No, sir; I don't know.
Q. You don't know when it was approved?
A. I have some idea when it was.
Q. When was it?

All taken under objection and exception.

A. Between five and six o'clock, I think.
Q. Now, what other papers you had you don't know?.
A. I don't know exactly the tenor of them now; it is so long since, that I have really forgotten.
Q. Now, isn't it a fact that you had no paper at all, excepting the bond?

The COURT: Well, what difference does it make whether he had any or not?

Q. Now, when you got to that store was the door locked?
A. It was.
Q. You say it was at 7 o'clock in the evening?
A. Thereabout; yes.
Q. Who opened it; how did you get in if the door was locked?
111 A. I believe Mr. John Peterson let me in.
Q. Well, do you know who let you in?
A. Yes, sir; I am almost sure he let me in.
Q. Who did you find in there?
A. I found him and this young man sitting behind you—Mr. Moreland——
Q. And the sheriff?
A. And the sheriff; yes; and I believe one or two other parties; the watchmaker was there, too.
Q. Mr. Hopping was in there, wasn't he?
A. Yes, sir.
Q. Major Brackett was there, wasn't he?
A. I don't remember if he was there, or if he came a little later.
Q. Well, how long after you got in there was it that you say the sheriff surrendered you these things?
A. About five minutes after.
Q. Now, what did the deputy sheriff do or say when you claimed his act to be a surrender of those goods?
A. He showed the paper to the sheriff himself. He said it was

all right. Thereupon he told me he gave me the possession of the goods there; surrendered it with the key of the place.

Q. What words did he use?

A. His exact words I can't remember.

Q. You testified in chief that he told you he would surrender to you the goods he had taken, and gave you the key; did he give you the key?

A. Yes, sir.

Q. Did you keep it?

112 A. Yes, sir.

Q. You were put out after awhile, weren't you; you were locked out?

A. Not after awhile; it was several hours after.

Q. Well, after awhile, I say; after some period of time you were locked out?

A. Yes, sir.

Q. Somebody else, then, must have had a key beside you?

A. Probably they had; I don't know.

Q. So that wasn't the only key of the store?

A. I don't know if it was.

Q. Now, you left that place about 11 o'clock?

A. At 11 or half past 11; thereabout; yes.

Q. When were you there again?

A. I wasn't there until four or five days later.

Q. How did you come to go there four or five days later?

A. Because I found the door opened.

Q. Who was with you?

A. Young Mr. Merrick was with me.

Q. Anybody else?

A. I believe the old Van Norman was with me; yes.

Q. Anybody else?

A. No, sir; that is all.

Q. Was Axel Van Norman with you?

A. He was there, I say.

Q. Axel Van Norman, young Mr. Merrick, and yourself?

A. Yes, sir.

Q. You found the door open?

A. Yes, sir.

113 & 114 Q. Did you go over to see whether it was open or not?

A. I passed by, and just as I passed by I looked in and found the place was empty, and whereupon I tried the door and the door was open, and I walked in and found certain goods there.

Q. What did you do?

A. I took them and removed them.

Q. What did you take?

A. I took a regulator clock, a carpet, gas fixtures, and a silver-plated frame.

Q. You took everything you found there, didn't you?

A. Yes; I did.

Q. And have kept them ever since?

A. Yes; I have.

Q. Now, that was the only time that you had been back in that store from the time you were put out of there at eleven o'clock on the night of the 31st of December until you went in there and made this raid?

A. It was.

Q. Did you see any of those men concerned in that store take a dollar's worth of stuff out of it; the Van Norman brothers or any of the other men?

A. I have not.

Q. Have you ever seen any of them take it?

A. No, sir.

Q. Don't you know that they didn't take the safe?

A. They took everything that was there.

Q. Don't you know they didn't take the safe?

A. Well, who took it?

Q. Don't you know who took it?

115 A. No, sir; I do not.

Q. You know that the safe was taken by Mr. Bigford?

A. No, sir; I never heard of it.

Q. Don't you know that the safe wasn't paid for, and that Bigford took it and paid for it; don't you know the marshal didn't take it?

A. I am not certain of that.

Q. Do you swear that the marshal did take it?

A. All I can swear about is what I know from my own knowledge.

Q. Didn't Mr. Bigford call on you in relation to it—have a talk with you and the Van Normans about it?

A. No, sir; not to my knowledge.

Q. Didn't he to the Van Normans?

A. It may be; that I don't know of.

Q. Didn't they tell you of it?

A. No, sir.

Objected to.

Q. Didn't you know the fact? And your statement that you never knew who took that safe or what became of it is just as true as anything you have sworn to, is it?

A. I think it is.

Q. How many times a day were you in that store during the month of December and previous to the 31st?

A. Probably once or twice a day.

Q. Every day?

A. Pretty near every day.

Q. What business did you have in that store once or twice a day, pretty near every day for a month?

A. I was just passing that way to my home.

116 Q. You had a business of your own up there, hadn't you?

A. I had.

Q. Occupied some of your time, I presume?

A. It did.

Q. And yet you spent that entire time—you were in that store of

Van Normans' once or twice a day, and thoroughly familiar with all their business and business condition up to the time of the 31st?

A. I didn't spend all my time there.

Q. No; I say you were in there once or twice a day, sometimes oftener, weren't you?

A. No, sir.

Q. On the 24th of December you took this inventory; what time of day did you take it?

A. No, sir; I did not, the 24th day.

Q. When was it?

A. On the 24th day of December.

Q. Well, that is what I say—the 24th of December.

A. You said the 31st?

Q. No, no; on the 24th of December you took this inventory; what time of day did you take it?

A. Took it, I think, in the morning, and occupied pretty near the whole day, I think.

Q. That was Chistmas Eve?

A. Yes, sir.

Q. One of the busiest days in the jeweler's business in the year, isn't it?

A. I think so.

117 Q. And you stayed there taking the inventory the entire day?

A. Yes, sir.

Q. And you were busy in your own trade, wasn't you?

A. I am.

Q. On that particular day, if you are a fur dealer?

A. Yes, sir.

Q. But you abandoned your own business and went into taking this inventory. Now, to make up the stock of goods that those Van Normans had on hand at different times and up to the Saturday before this, there were certain valuable diamonds?

A. Yes, sir.

Q. Diamond bracelets?

A. Yes, sir.

Q. Diamond brooches?

A. Yes, sir.

Q. And diamond rings?

A. Yes, sir.

Q. And loose diamonds?

A. Yes, sir.

Q. When did you see those last?

A. I saw them there, to the best of my recollection, on the 31st of December.

Q. What time of the day?

A. In the morning.

Q. Where were they?

A. They were in the show-case.

Q. And in plain sight, where anybody could see them?

A. Yes, sir.

118 Q. Were they there that night when you went there?
A. The goods were all upset when I came there.
Q. Did you see those things there when you came?
A. I didn't see anything of it, sir; no, sir.
Q. Have you ever seen anything of them since?
A. No, sir.
Q. What became of those diamonds?
A. I can't tell you. I don't know.
Q. Now, you have been speaking about some valuable watches here.
A. Yes, sir.
Q. Has any application been made to you in relation to those watches by anybody representing Mr. Herzog?
A. There has.
Q. An attorney in Minneapolis made an application, presenting it to you?
A. Yes, sir.
Q. Claiming the watches were commission goods, didn't he?
A. Yes, sir.
Q. You conceded that to be true, didn't you?

Objected to as immaterial.

Q. He claimed those were commission goods, didn't he?

Objected to as immaterial.

Mr. O'BRIEN: I offer to show by this witness that among the property he claims is a watch of the value of some $300 or over, the title to which the witness stated and admitted was in one Herzog & Co., and that he aided and assisted the Herzogs in
119 bringing a suit upon their title against the defendant in this case, and that the suit is of record and pending in court.

Same objection, ruling, and exception.

Q. Where were the keys of the inside drawers of this safe?
A. I couldn't say. I never had any.
Q. Did you ever ask for them?
A. No, sir.
Q. Never looked for them?
A. No, sir.
Q. Don't you know that on the day of the levy that Axel Van Norman had those keys?
A. I am not aware of that.
Q. Weren't you present when he was asked for them and refused to give them up?
A. I can't remember that.
Q. Didn't you hear him asked for the keys of the safe by Mr. Hopping and the other officers there in the store in your presence?
A. No, sir; I don't recollect of it.
Q. Will you swear that those keys were not demanded from him for the inside drawers of that safe in your presence that night?
A. No, sir; I can positively not remember that.

Q. You can't remember; it may have been; they may have been asked of him that night?

A. It might; yes.

Q. Did you ever ask him for the keys?

A. No, sir; I did not.

Q. Now, are you a jeweler?

120 A. No, sir; I am not.

Q. Have you ever been in the jewelry business?

A. No, sir.

Q. Have you ever dealt in diamonds or jewelry articles of any kind?

A. No, sir.

Q. How do you claim, then, to be a judge of the value of this property?

A. Because for the last three years I have been in a store where jewelry was kept and sold and handled daily.

Q. What store was that?

A. B. B. Marshall.

Q. Is that where your store is?

A. Not now; it was last winter.

Q. Were you employed in that store?

A. No, sir.

Q. You had your own portion of it, I presume, for your business?

A. Yes, sir.

Q. The reason, then, that you claim to be a judge of the value of those goods is that you had your business in one part of the store, the other part of which was occupied by somebody else in this business; did you attend to this man's business for him?

A. No, sir; I did not.

Q. Did you have anything to say to their business?

A. Frequently talked about——

Q. Did you ever see their cost marks?

A. No, sir.

Q. Could you read their cost marks?

121 A. No, sir.

Q. Now, will you please tell me what are the different grades of watch composing this stock?

A. Yes; they were 18 karats, 16 karats; as low as 10 and 8 karat gold watches.

Q. What are the makers' names; what are the standard make of watches?

A. That I couldn't exactly give to you.

Q. State whether or not there are standard makes and whether or not the different makers have different values attached to their goods.

A. Yes, sir.

Q. Who are those different makers?

A. They are the Elgin and Waltham and a good many other makers.

Q. What is the difference in value between the Elgin and Waltham makes in the same kind of a case?

A. Well, that would be hard to say without seeing the makers' watches.

Q. Do you know what the rules are for valuing diamonds?

A. Yes, sir; somewhat.

Q. How are they sold?

A. By karats.

Q. How much is a karat worth?

A. A karat is worth about a hundred dollars.

Q. What would be the size of a diamond that would be about two or three karats?

A. It would be about as large as a pea, I should think.

122 Q. Does anything else excepting the weight of the diamond enter into its value?

A. The size of it.

Q. Well, that would be a part of the weight; anything excepting the size and weight enter into the value of it?

A. Yes, sir; the brilliancy and lustre.

Q. Anything else?

A. And the way it is cut; yes.

Q. Anything else?

A. The color of it.

Q. State whether or not diamonds have a standard value.

A. I think they have.

Q. What is it?

A. From the way they are manufactured.

Q. What is the standard value of a diamond?

A. If you will show me one I can pretty nearly tell you the value of it.

Q. I haven't got any; I ask you what is the standard value of it? Do you know what is the standard value of the diamond?

A. All I can state about that, I know when I see a diamond what it is worth, about.

Q. That is the only way you can tell?

A. Yes, sir.

Q. Now, you are not any more familiar with the balance of this stock than you were with what we have been speaking about particularly, and you don't know anything more about watches than diamonds?

A. I never made any.

123 Q. Never bought or sold?

A. No, sir.

The COURT: I think this witness stated something in regard to these Herzog watches on his direct examination. I think I will allow you to cross-examine.

Q. Now, sir, weren't you applied to by the representatives of Herzog & Co. about those watches?

Objected to as incompetent and immaterial. Exception by plaintiff.

A. I believe they were.

Q. What did you know about those Herzog watches?

A. All I knew is that the watches were sent on approval and on a memorandum, and if the watches did not suit that they were going to be returned.

Q. Well, did you ever see the watches?

A. Yes, sir; I did.

Q. You saw the memorandum?

A. I saw the memorandum.

Q. Now, before those watches were accepted, as a matter of fact, the attachment came in?

A. Yes, sir.

Q. Now, you were afterwards applied to by the Herzogs Co. or their representatives for information concerning them, weren't you?

A. I don't really remember, now, if I was.

Q. What an extraordinarily bad memory you occasionally have.

A. I can't help that, sir.

Q. Don't you remember of the fact, and you told them
124 they were on memorandum, and that you didn't claim them, within the last three weeks, here?

A. I can't remember that, sir.

Q. Don't you know, sir, that the marshal has been sued for those watches within the last three or four weeks?

A. No, sir; I was not aware of that fact.

Q. Do you, as a matter of fact, claim those Herzog watches to be a part of the Van Norman estate?

Objected to as immaterial.

The COURT: I think you may ask.

(Exception by plaintiff.)

Q. Do you claim those Herzog watches to be a part of this Van Norman estate of which you are assignee?

A. I would certainly claim them if they were there and belonged to the stock.

Q. I ask you if you claim those watches to be a part of the Van Norman estate and owned by you to-day as assignee?

A. I think I would.

Q. Do you—do you swear that those watches are your property?

Objected to as before, and objection sustained.

(Exception by defendant.)

Q. What do you mean when you say that you claim those to be a part of the estate?

A. I mean, simply, that if the goods are sent to the Van Normans (were bought by them) that that property is equally a share of the stock in trade

Q. Don't you know that those goods were not bought by
125 them; didn't you see the memorandum, and don't you know that they were there on memorandum?

A. I know that for a fact.

Q. Didn't you read the terms of the memorandum?
A. No; that I don't think I did.
Q. Don't you know that that memorandum was never complied with?

The COURT: I understand him to say that he claims them if he is entitled to them; that, I suppose, is a matter that he has not been able to determine.

Redirect examination by Mr. MERRICK:

Q. Now, about one thing perhaps I did not understand you. After you presented the bond, the evening of the 31st, in the store there, showed it to the sheriff and made a demand, what demand, if any, did you make upon Hopping, as the deputy United States marshal?
A. None whatever.
Q. None whatever at that time?
A. No, sir.
Q. That deed of the Headerly property, how was that deeded, do you remember?
A. It was deeded to L. P. Gravee and C. C. Bennett.

Mr. O'BRIEN: I move to strike that out as not the best evidence.

Plaintiff consents that it may be stricken out.

GUSTAVE VAN NORMAN, recalled on behalf of the plaintiff, testified:

126 By Mr. MERRICK:

Q. You said that you was one of the firm of the Van Norman Bros.?
A. Yes.
Q. You testified before to-day?
A. Yes, sir.
Q. Your name is Gustav, and your brother, the other member of the firm, is Axel B. Van Norman?
A. Yes, sir.
Q. And you were copartners on the 31st day of December last?
A. Yes, sir.
Q. What was your department in the store; what did you do particularly?
A. I do manufacturing—workman.
Q. And where did you work?
A. In the back part, in the workshop.
Q. How long had you been in that business?
A. I have been in that business about 24 years.
Q. Where—in the manufacture of jewelry?
A. Yes, sir.
Q. Where the most of the time?
A. I have been three years—a little over three years—in America; three years and a half, about, manufacturing.
Q. And where before in this country?

A. Winnipeg, Manitoba.
Q. How long have you been in this country?
A. I have been a little over one year.
Q. In America?
127 A. No; here in Minnesota.
Q. How long have you been in America?
A. About three years and a half.
Q. You know about this stock of jewelry, don't you?
A. Yes, sir.
Q. Was you present at any time when Mr Bennett and your brother Axel took an inventory or account of the stock in December?
A. No, sir; I was not present.
Q. You have a knowledge of the value of jewelry, haven't you?
A. Yes, sir.
Q. Of watches?
A. Yes, sir.
Q. And of diamonds?
A. Yes, sir.
Q. You saw this stock of goods, did you, the 29th day of December—that is, Saturday night?
A. Yes, sir.
Q. Now, tell the jury what the condition of that stock was at that time.
A. That stock of watches, jewelry, and every kind what belonged to the jewelry business?
Q. Well, what was its condition?
A. I don't understand what you mean by condition.
Q. Were the cases full?
A. Yes, sir.
Q. Can you make an estimate of about what the value was there on Saturday night, the 29th day of December?
A. Yes, sir; I think I can.
128 Q. About how much?
A. The value was about $9,000 to $10,000.
Q. I will ask you to state if you had looked over this stock of goods some days before?
A. Yes, I took—I looked over the stock.
Q. You looked over the stock?
A. Yes, sir.
Q. To see about it?
A. Yes, sir; because I took the book on the order of Mr. Bennett and made the inventory.
Q. You took the book?
A. Yes; I thought there ought to be more than what there was.
Q. You went over the stock yourself?
A. Yes, sir.
Q. Now, did you see this stock of goods on Monday, the 31st day of December, at all?
A. Yes, I did.
Q. About what time did you go to the store?

A. About half past nine in the morning.
Q. What was its condition?
A. It was all full.
Q. Well, did it remain the same as it did the Saturday night before?
A. Yes, sir.
Q. Now, go on and state what there was in the safe. Did you go there?
A. Yes, I was there. There was about a quarter after that that I came in the store. The watchmaker asked me for watch
129 repairing, and I went to the safe and looked for those watch repairing and opened one drawer and there was three fine watches in there, and there was two watches we got from Herzog.
Q. What was the value of those watches?
A. There was a chronometer worth $275, and a repeater watch, 18-karat, worth $350; the other one was a plain case, one plain box-case, worth about $165; then there were, in same drawer, some pieces of tissue paper with loose diamonds in; they were worth about $455.
Q. Are you acquainted with the value of diamonds?
A. Yes, sir.
Q. Do you know what diamonds were there?
A. Yes, sir.
Q. You had seen them before?
A. Yes; I saw them the time we bought them.
Q. And those diamonds were there?
A. Yes.
Q. Now, what was in the work-room in the way of diamonds?
A. In the work-room was tools and stoves—one stove and one forge and work-bench, chairs, and some kind of jewelry that we have to repair; one diamond ring and one plain ring belonged to Mr. Marshall's jewelry store.
Q. Now, state where that diamond was, what it was, and its value.
A. The diamond ring was in the paper box; it was valued at $150, at what Mr. Marshall claimed.
Q. Well, what was its value?
A. Its value was $150.
Q. It was there to be set?
130 A. No; the ring have to be made smaller—it was too big.
Q. That was on your work-table?
A. It was just in my place on the work-table.
Q. When did you last see that there?
A. I saw the ring last the 31st day of December—about a little after 2 o'clock.
Q. You was in there then?
A. Yes, sir.
Q. Then on your table?
A. Yes.
Q. In the box?
A. Yes, sir.
Q. Have you seen it since?

A. No, sir.
Q. What else was there on that table there that you had?
A. There was one plain gold ring belonging to Mr. Harry Legg, on Nicollet avenue.
Q. What became of that?
A. I haven't seen the ring left.
Q. When did you see that last?
A. I saw it last—it was in the forenoon.
Q. What time in the forenoon?
A. Oh, it was about half past 10, I think.
Q. What else was there in that room?
A. One pair of gold bracelets, what we sold at Christmas, and it is coming back to be made smaller; when I cut one of those bracelets in two and put it together in a piece of chalk and soldered
131 one side of it on my table; and this was in the afternoon that I did this work; and then, as soon as I have soldered one side, I took it off and turned it around, and just commenced to work on it again when my brother Axel come and called me out to go up to Mr. Merrick's office to sign the assignment.
Q. To make the assignment?
A. Yes, sir.
Q. It was there, then, was it?
A. Yes.
Q. Did you see that any more?
A. No; I didn't see it after that.
Q. Did you go back into that place afterwards that afternoon?
A. No, sir.
Q. Now, from the time you saw those watches and the diamonds in the safe, was there anything taken out from the store?
A. No, sir.
Q. Until these men came in?
A. No, sir.
Q. There were some sales made, were there not?
A. Yes.
Q. The week preceding?

Objected to.

Q. Can you state whether there were sales or not?
A. Yes.
Q. The week preceding?
A. Yes.
132 Q. Can you state, from the time, the 24th, when your brother Axel and Mr. Bennett took the inventory, what amount of goods were received, about?
A. Yes, about—well, about, I think, two or three thousand dollars, I think; I don't know sure.
Q. Do you know whether all those purchases are on the book or not?
A. I think it is in the book.
Q. Do you know?
A. I think so.

Q. Do you know whether the Herzog purchase was on the book or not—the watches?
A. I don't know if they were on the book.
Q. You received considerable many goods?
A. Yes.
Q. State whether or not you were in the habit of looking at the books to see what the sales were, along.
A. Sometimes I do, in the evening.
Q. Can you state a little more definitely about the number of the watches that you had there; how many? I don't ask you to be accurate, but about how many?
A. I think there were about ten dozen, together.
Q. What did this stock consist of principally?
A. Watches and jewelry.
Q. Well, such as what; watches and what else?
A. And silverware; clocks.
Q. Do you remember about how many clocks there were?
A. I think there were about one hundred clocks, small and big.

133 Cross-examination by Mr. O'BRIEN:

Q. Are you a married man?
A. Yes, I am.
Q. When did you form this partnership with your brother?
A. I formed the partnership 1881—it was in May, I believe.
Q. Where was that business carried on—Minneapolis?
A. No; it was by Michigan.
Q. In Michigan?
A. Yes.
Q. You and your brother Axel were partners there, were you, in the jewelry business?
A. Yes.
Q. What became of that business?
A. We couldn't do any business——
Q. Well, failed there, didn't you?
A. No, sir; didn't fail.

Objected to as incompetent and immaterial.

The COURT: I don't think it is material what they did in Michigan.

Q. Well, where did you go next—you and your brother?
A. We — going from Detroit to Winnipeg, in Manitoba.
Q. The same business and the same partnership?
A. Yes, sir.
Q. What happened to that business up there?

Same objection. Objection sustained.

134 Q. When did you go out of business in Winnipeg?

Objected to as immaterial. Objection sustained, and exception by defendant.

Q. When did you commence business in Minneapolis?
A. I think it was in August, 1883.
Q. In August, 1883, you commenced your business in Minneapolis—the same partnership and the same business, wasn't it?
A. Yes, sir.
Q. How much capital did you have in that concern?

Objected to as incompetent, irrelevant, immaterial, and not proper cross-examination.

Mr. O'BRIEN: I propose to show by this witness that these men went into business in Minneapolis in August, 1883, with no appreciable capital, or at least with very little; that between that time and the 31st day of December, 1883, they purchased some seventeen to eighteen thousand dollars' worth of goods; that they purchased those goods on four months' time; that the larger part of their purchases were made in September and in October; that they continued those purchases right straight down to the very day they were closed up, almost, in December. I propose to show that they bought thousands of dollars' worth of goods, by orders given by them, between the time of their attorney going to Chicago and the time that he telegraphed them, as he says, that he could not make any compromise with their creditors. I propose to show the purchase by them of thousands of dollars' worth of property at the very
135 time their attorney, Mr. Merrick, was trying to settle upon a compromise with their creditors. I propose to show that these goods were on hand on the 31st day of December, 1883, at four o'clock in the afternoon, and that in the interim all the goods were in the sole possession of this defendant and his brother. I also propose to follow it up by proof showing that the inside drawers in the safe, in the place where this witness says the watches and diamonds were, were locked, the keys in the possession of his brother, and that the keys were demanded of him and he refused to give them up.

The COURT: The latter part of that offer you may show.

Q. Now, did you have anything to say in the selling of goods in the store, or did you work in the workshop all the time?
A. I worked in the workshop.
Q. All the time?
A. Yes, sir.
Q. You were doing the mechanical part of the business?
A. Yes, sir.
Q. Did you stand behind the counter and sell goods at all?
A. Sometimes.
Q. Did you have anything to do with receiving goods and making the inventory of them or keeping the books?
A. No, sir.
Q. Most all your work was the mechanical work?
A. Yes, sir.
Q. Were you doing much repair work?
136 A. Yes, sir.

Q. Do you remember when the sheriff came in there?
A. No, sir; I went out.
Q. On the 31st day of December?
A. I wasn't in the store at that time.
Q. Was the stock of goods all on hand on the 31st of December, at 2 o'clock in the afternoon, when the sheriff came there, or at 1 o'clock, or 12 o'clock?
A. Yes.
Q. When did you leave the store?
A. I left the store about 1 o'clock.
Q. Well, the sheriff got in there a little after 12?
A. Yes, sir.
Q. Well, now, when you left that store——
A. No.
Q. Was the sheriff there?
A. No; I leave the store, I believe it was, half past 11.
Q. Half past 11?
A. Yes.
Q. What time were you in the store next—when did you go into the store the next time after half past 11?
A. About 2 o'clock.
Q. Wasn't the sheriff there then?
A. Yes, sir.
Q. And nobody else—no other officer?
A. The watchmaker.
Q. No other officer?
A. No.
Q. Was your brother there?
A. No, sir.
137 Q. The watchmakers were there?
A. Yes, sir.
Q. Was the stock all there then?
A. Yes, sir.
Q. When did you go out of the store again?
A. I left the store again about half past 2.
Q. When did you go back to it?
A. I didn't go back again.
Q. You never went back?
A. No.
Q. Did you ever see that stock of goods from that time?
A. No, sir.
Q. From half past 2 up to the present time?
A. No, sir.
Q. Then, you don't know anything about it from half past 2 when you left it in the store?
A. No, sir.
Q. That is all you know about it?
A. Yes.
Q. Do you know whether or not the inside drawers of that safe were kept locked?
A. The forenoon I was there the safe wasn't locked.

Q. Was that kept locked?
A. No, sir.
Q. They were never locked?
A. No.
Q. Do you swear that the inside drawers in that safe were not locked on that day?
A. I can't swear that the safe was not locked at the time I looked in the safe.
138 Q. I don't mean the outside; I mean the inside.
A. Yes; I mean the inside, too.
Q. Well, were they kept locked—did you ever lock the inside drawers of that safe?
A. Sometimes they were locked and sometimes not.
Q. When they were locked who locked them?
A. My brother.
Q. Did he carry the keys?
A. Yes.
Q. Did anybody else have any keys to those inside drawers?
A. No, sir.
Q. They did not?
A. No.
Q. When you left the store did you leave your brother there?
A. What time?
Q. In the morning at 11 o'clock?
A. No, sir.
Q. Who did you leave in the store besides the watchmaker?
A. There was my brother Emanuel.
Q. How many brothers have you got up there working in that store?
A. Got three brothers.
Q. Do you mean you and your brother Axel and Emanuel?
A. Yes, sir.
Q. What was Emanuel's business?
A. Manufacturing jewelry, too.
139 Q. Was he a clerk in the store?
A. No, sir.
Q. He was a repairing man?
A. Yes, sir.
Q. Well, now, do you mean to say that your brother Axel left those drawers in that condition when he wasn't around there?
A. At the time I was in the store—I came in—the watchmaker asked me for the watch repairing, the drawers was open.
Q. Where was your brother Axel then?
A. I don't know where he was.
Q. Why did the watchmaker ask you for the watch repairing if the drawers were open—couldn't he get them himself?
A. No; he didn't go in the safe himself.
Q. He could have got them, couldn't he, as well as you?
A. Yes, he could; but he came and asked me for them.
Q. Why did he do it?
A. I can't help it.

Q. Can you give this jury any reason for this man asking you to do that which he could do himself?

A. Every time he wants something in the safe then he asked me or my brother.

Q. Was the safe usually locked or usually open?

A. I don't understand that.

Q. Was the safe most always open or most always locked—was the safe generally locked or generally open?

A. Sometimes when I came to the safe it was locked and sometimes it was open.

140 Q. Now, where were those diamonds that you say were in the safe?

A. In the same box with the watches.

Q. How much were they worth?

A. $455.

Q. How much?

A. $455.

Q. $455?

A. $455.

Q. $355?

A. $455.

Q. And the watches were worth about $255 apiece?

A. One.

Q. How much were the others?

A. The other one was $350.

Q. There was two of them?

A. Yes, sir; they were fine, and there was one——

Q. What did you keep them in the safe for?

A. Because my brother wouldn't put them in the show-case, because we have to send them back again.

Q. There was about a thousand dollars' worth of stuff, then, in that drawer in the safe?

A. Yes, sir.

Q. Who got those you don't know?

A. No, sir.

Q. You never saw that stock again after two o'clock in the afternoon?

A. No, sir.

Q. Did you know at that time that you could not go on with your business—that you were going to fail?

141 A. No, sir; I didn't know it.

Q. You supposed in that day that you were all right and going on right along, didn't you?

A. Yes.

Q. Didn't suppose there was any trouble about it?

A. No.

Q. You didn't know what the sheriff was doing there?

A. Yes; I knew just as soon as I came to the store.

Q. Well, that was at two o'clock?

A. Yes; at two o'clock.

Q. The first you knew of any trouble was at two o'clock?

A. Yes.
Q. When you came back there at that time?
A. Yes, sir.
Q. When did you execute this deed of assignment; when did you sign this deed of assignment to Bennett?
A. It was between two and three—I think so; yes, between two and three.

Redirect examination by Mr. MERRICK:

Q. In these watches he calls your attention to—how many watches were in the safe?
A. In the safe?
Q. Yes; when you went there—in that drawer.
A. I explained that before; there was three watches in the
142 drawers down-stairs; on the bottom of the safe there was one plush case with a watch in, and there was one plush case with a pair of bracelets in.

Recross-examination by Mr. O'BRIEN:

Q. Where is your brother, Axel B. Van Norman?
A. I don't know where he is now.
Q. Is he in Minneapolis?
A. No, sir.
Q. When did he leave it; when did he go away?

Objected to as immaterial.

The COURT: I think you may ask that question.

Q. When did he go away?
A. He is going away in the middle of March.
Q. He went away in March?
A. Yes.
Q. Is he a married man?
A. No, sir.
Q. Do you know where he went to?
A. No, sir.
Q. Did you know that he intended to go away before he went?
A. No, sir.
Q. Have you heard from him since?
A. No, sir.
Q. Have you tried to find out where he is?
A. Yes.
Q. You can't find out?
A. No, sir.
143 Q. Did he suddenly disappear; didn't you know he was going away; didn't you know he was going away?
A. He talked sometimes, he shall go up to Winnipeg.
Q. He has never written you since?
A. No.
Q. Have you had any quarrel or trouble with him?
A. No, sir.

Q. Is he a very sickly man—apt to die suddenly?
A. No—yes, he has been sick, because he goes here in Minneapolis every day and do nothing.
Q. So last March he went away?
A. In March.
Q. And you have never seen or heard from him since?
A. No, sir.
Q. You have never had any trouble or quarrel with him?
A. No, sir.
Q. Your brother Axel was the financial man of this concern, wasn't he—the man that bought the goods and sold them and kept the books, and everything of that kind?
A. Yes, sir.
Q. And you were the man that worked in the factory?
A. Yes, sir.
Q. He was the head man of the concern?
A. Yes.
Q. He was the business man?
A. Yes.
Q. Isn't your brother a married man?
A. I don't know if he is married yet.
Q. Well?
144 A. I don't know that he is married.
Q. Don't you know where his wife lives?
A. No, sir.
Q. Don't you know that he is a married man, and that his wife lives out in Montana somewhere?
A. No, sir.
Q. Deadwood?
A. No, sir.
Q. You never heard of it?
A. No, sir.
Q. Or any woman that he referred to as his wife?
A. No, sir.

Redirect examination:

Q. Where does your father live?
A. He lives in Sweden.

Court here adjourned until 9.30 a. m., Nov. 13, 1884.

A. N. MERRICK, recalled on behalf of the plaintiff, testified:

By Mr. LEVI:

Q. Mr. Merrick, will you please state when and under what circumstances you served that demand you testified to yesterday upon the defendant?
A. On the 2nd day of January I served that paper.
Q. This year?
A. This year.
145 Q. Where at?
A. In my office in the city of Minneapolis.

Q. Under what circumstances?

A. I desired to see him and I went over to the store.

Q. What store?

A. To the store of Van Normans'; went in and waited a little while, a half an hour or so, and Mr. Hopping was out. Mr. Bryant was there at that time. He didn't come in, and I left word for him to come over to the office when he came up. Mr. Denny came over, introduced himself as the United States marshal; said he was the United States marshal. I said, "I suppose you are the party that seized these goods." He said, "Yes, he was, and that he was up there to arrange for the taking of them away."

Q. What goods did you refer to?

A. The Van Norman stock of goods, belonging to the Van Norman Bros. I then said, "I have a demand which I desire to serve upon you;" and I gave him a copy, and he took and looked at it. I said to him, "Would it not be better, under the circumstances, for you to give up these goods?" He said, "I would be glad to give them up; Mr. O'Brien is running this thing. I am obliged to take them to St. Paul, and I am up here to arrange for the taking of them down there."

Q. Is that all?

A. I think that was all.

Q. Do you remember——

A. I asked him, I know, if he proposed to take them out
146 of the city, and he said he did; that they were then being boxed, as I understood him to say; that he was seeing to them.

Q. Seeing to have them boxed?

A. Yes; that he came up to look after the matter.

Cross-examination by Mr. O'BRIEN:

Q. You understood that whatever he had taken he had taken as marshal and under process from the circuit court of the United States of this district?

A. Well, he so stated that he had a writ.

Q. I say that is your understanding of it?

A. Well, I say he so stated that he had taken them under a writ.

Q. And issued by the United States circuit court to the United States marshal?

A. Well, he stated he had taken them under a writ and that your (Mr. O'Brien's) instructions were to hold them under all circumstances.

Q. You knew it was a fact, didn't you?

A. I knew it was a fact that they claimed to have a writ.

Q. Well, you knew it was a fact; it is a fact, isn't it?

A. Yes, sir; I supposed it to be a fact; he claimed it so.

Q. Well, you have taken part in all the proceedings in the circuit court?

Objected to as improper.

The COURT: I do not think you could show the writ by this witness.

147 WITNESS: I saw no writ—nothing of the kind; he merely claimed that he had some process.

Redirect examination:

Q. Was there anything said there by Mr. Denny in relation to Mr. Hopping?

A. I understood him that he was away at Carver or somewhere when this came to the office, and for that reason Mr. Hopping, his deputy, was sent up, or one of his deputies; but he was away, and as soon as he came back and learned of this thing he came home—came up to Minneapolis to take charge of it and to see how the thing was going on.

Recross-examination by Mr. O'BRIEN:

Two letters of date, Chicago, December 29, and statement, dated 28, and telegram, dated December 30, of 1883, shown witness.

Q. Mr. Merrick, I understand that is the correspondence with J. H. Purdy & Co. that you have spoken of in your former examination here?

A. Yes, sir. I think there is still another letter, Mr. O'Brien; I think there is still a letter that we couldn't find last night. We had a record of three letters on that day, and we found those two with the statement, and when I testified yesterday I had forgotten about the telegram; that telegram was received Sunday night, I think, about ten o'clock, December 30.

148 Q. Well, this letter here is the one you referred to received on Monday containing the statement?

A. Well, I can't say; I have the impression that there is another one.

Q. You received only one statement?

A. We received only one statement, and that is the statement.

Q. That was received and there is the letter enclosing it, isn't it, and it refers to the statement as being enclosed in it?

A. Well, then, that is the one; those two letters were received Monday morning.

Papers offered in evidence.

Mr. LEVI: We desire to reserve objection to all this testimony as irrelevant, incompetent, immaterial, and not cross-examination.

The COURT: I have already said that I don't think fraud can be shown in this case to vitiate the assignment. If action was commenced in that connection by Purdy, I think that is sufficient to sustain the attachment on that point; but on that question I will hear whatever testimony there may be bearing upon it; this may be received.

Exception by plaintiff.

Dispatch also offered in evidence and read.

Q. Mr. Merrick, what was to be "arranged" on Sunday?
A. I suppose he had reference there to having the attachment papers made.
Q. How long does it take to get out attachment papers in a case of this kind?
149 A. Well, it wouldn't take—didn't take me very long, wouldn't ordinarily, but what Mr. Purdy's ideas were about time I don't know.
Q. You think, then, when he said, "Arrange Sunday, execute Monday, as talked," that it meant to arrange about the attachment?
A. Yes, sir; that was according to our talk.
Q. "Execute Monday, as talked?"
A. Yes, sir.
Q. You didn't think that referred to the assignment, did you?
A. No, sir; no, sir; had no reference.
Q. The word "execute" would apply to the attachment?
A. Yes, sir; because that was what he had talked about; he said if he sent the claim he should direct an attachment.
Q. When you went down to Chicago to see those creditors how long did you remain in that city?
A. Well, sir, my impression is that I went down—left Monday night; left there Saturday morning.

Mr. LEVI: It seems to me this counsel must be considered as calling this witness as his own, and it don't seem to me that this examination can be material, nor these letters. We simply reserve the objection to all this testimony.
The COURT: I think you examined him pretty fully on going to Chicago.
Mr. O'BRIEN: Well, I know; but I want to examine now in view of this correspondence here.

150 Q. You were there from Monday—you left Monday—you were there from the time you reached Chicago up until the 29th?

Same objection, ruling and exception.

A. Saturday morning.
Q. During that time did you see Mr. Purdy?
A. Yes, sir.
Q. You were at his place frequently, weren't you?
A. Well, no, sir; I saw Mr. Clapp; I saw Mr. Flershem.
Q. Saw Mr. Flershem, did you?
A. I think so; I saw one of the firm; I don't know but both of them.
Q. Mr. Clapp was one of the large creditors?
A. He was one of the largest.
Q. The next largest was Lapp & Flershem?
A. Yes, sir.
Q. You spent a good deal of time with Mr. Clapp?
A. I did not.
Q. Saw Mr. Purdy?

A. Saw Mr. Purdy; I saw Mr. Clapp several times, and went with Mr. Clapp to Mr. Purdy; went with Mr. Clapp to Lapp & Flershem's office.

Q. Now, without going into details, didn't you on that occasion state you were acting on behalf of the Van Normans? Didn't you state to Lapp & Flershem, at that time, that you had come down there to effect this compromise; that the Van Normans would pay fifty cents on the dollar; that if they did not take that they would not get anything, and that the Van Normans would make an assignment, and that they would not get ten cents on the dollar?

151 Objected to as not cross-examination and as having been gone into before. Objection overruled.

A. I did not.

Q. Or anything to that effect?

A. If you want the conversation I will give it to you.

Q. I want an answer to my question.

A. I say I didn't make that statement.

Q. Did you make any statement to the effect that if they didn't accept the compromise an assignment would be made?

A. I said to one or other——

Q. Now, you answer it yes or no.

A. I didn't state it in that way.

Q. Did you make to these men any statement to the effect that if a compromise was not effected an assignment would be made?

Objected to as incompetent.

A. I did not.

Q. Then you said nothing about an assignment at all down there?

A. I don't say that; I say this: That I did state to them that unless a compromise was effected, from the fact that Clapp & Co. had sued them for $4.000 (they would have judgment in a few days), and necessarily, it would necessarily result in an assignment, either voluntary or involuntary; that is just what I stated; and I furthermore stated to one—either Lapp or Flersham, it may be both of them——

Q. You have answered my question.

A. Both of them——

152 Q. Stop! You are a lawyer, sir, and you understand; you have answered my question. I ask the court to stop the witness.

Mr. LEVI: Well, the witness is proceeding now to state what was said.

Mr. O'BRIEN: I have had an answer to my question and he may stop right there.

Mr. LEVI: I submit it to the court. Having called out the testimony, the witness is entitled to give the whole of the statement.

The COURT: Well, Mr. O'Brien asked a question and he answered it, No. Then he went on to state something that he did state, which I don't think to be responsive to the question.

Q. You have been speaking about a suit by Clapp & Co. against the Van Normans?

A. Yes, sir.

Q. Was there more than one?

A. I don't think there was. It was on promissory notes. I wasn't interested, nor attorney.

Q. You said it was for $4,000?

A. I had that impression. I don't know that all the notes had matured.

Q. There is the summons and complaint. Is that the one you refer to?

A. I never have examined them. I merely took the statement of their attorney. It may have been that sum. I had an impression it was $4,000. It may be that their entire claim was $4,000, and that the action was for a less amount.

153 Q. That is an action and complaint in municipal court, at Minneapolis, for $3,300?

A. I didn't read what court it was on, that $3,300. When I read it I knew nothing about that suit, Mr O'Brien. The suit that I had reference to was in the district court and was for, as I understood it, $4,000—amount of notes.

Mr. O'Brien: I desire to offer this in evidence. It is summons in the district court of Hennepin county for $33.27—suit of Clapp against the Van Normans.

Objected to as incompetent, irrelevant, and immaterial. Objection sustained.

Mr. Levi: This is not a complaint against the Van Norman Bros.; it is a complaint against Van Norman and one Morganheimer.

Witness: The suit, if you will allow me to explain, the suit I have reference to——

Q. One minute; I have no reference to it——

Witness (continuing): Was brought by Lane & Dodge.

Q. I am not asking any questions in relation to the matter.

Paper marked Exhibit "D."

Redirect examination:

Q. The suit you are speaking of, brought by Mr Clapp, was against Van Norman Bros., was it?

A. Yes; and was brought——

154 Q. It was brought against Van Norman Bros., and it was brought by Lane & Dodge, as attorneys for Clapp & Co., and was in the vicinity of $4,000?

A. And on promissory notes.

Letter of December 29, 1883, marked Exhibit "E."
December 29, 1883, marked "F."
Statement marked Exhibit "G."
Telegram marked Exhibit "H."

EMANUEL VAN NORMAN, sworn and examined on behalf of the plaintiff, testified:

Q. How old are you?
A. I am 19.
Q. Where do you live?
A. In Minneapolis.
Q. Where did you live during the month of October, November, and December, 1883?
A. In Minneapolis; No. 10 Twelfth street.
Q. What business were you engaged in?
A. Manufacturing jewelry.
Q. Are you a brother of Axel B. Van Norman and Gustave Van Norman?
A. Yes, sir.
Q. Where was you engaged in working; where did you work?
A. In Minneapolis.
Q. Well, whereabouts?
A. In the back part of the store.
Q. Whose store?
A. Van Norman Bros.
155 Q. That is, Axel Van Norman and Gustave Van Norman?
A. Yes, sir.
Q. When was that?
A. It was last year.
Q. About what time did the Van Normans start business there?
A. It was in August, I guess 1883—1882, I guess.
Q. That was in the store on Nicollet avenue?
A. Yes, sir.
Q. And you worked in the shop?
A. Yes, sir.
Q. Did the door open from the front room or the store room into this shop; how did you get into your shop?
A. Go through the store.
Q. You saw this stock of goods, did you, that has been spoken of?
A. Yes, sir.
Q. How frequently; how often?
A. Oh, most every day.
Q. Do you remember seeing the stock of goods on Saturday, the 29th day of December?
A. Yes, sir.
Q. Will you tell the jury about its condition at that time—what there was there?
A. There was watches and clocks and jewelry and silverware and everything else what belongs to a jewelry store.
Q. Do you know about how many clocks there were there?
156 A. There was about ninety clocks.
Q. Do you know how many watches—gold and silver?
A. All the watches, I guess, was about ten dozen, and nickel watches.
Q. In all how many?

A. About ten dozen.
Q. Do you know about how many opera glasses?
A. I think there was a little over two dozen.
Q. Solid gold rings?
A. Yes, sir.
Q. How many?
A. About thirteen dozen.
Q. Were there any diamonds there?
A. Yes, sir.
Q. Something has been said about some expensive gold watches. Will you tell the jury when you saw those, if you saw them at all, where they were?
A. I saw them on the 28th of December in the safe.
Q. What kind of watches were they?
A. I don't remember the name on it.
Q. Well, were they expensive watches?
A. Yes.
Q. Now, you saw these Saturday night, the 29th day of December, at the store?
A. Yes.
Q. The stock of goods?
A. Yes, sir.
Q. When did you see it on the Monday following—the 31st? What time did you go to the store the 31st?
A. About 8 o'clock.
157 Q. Who was there then?
A. My brother.
Q. Which brother?
A. The older one—Axel.
Q. Who else?
A. He was alone.
Q. Now, will you tell the jury what the condition of that stock was—whether it was the same as it was the Saturday night before?
A. It was just the same as it was the Saturday night before.
Q. State now to the jury whether you remained in there all the forenoon.
A. I was in the back shop; I was working.
Q. Did you remain there all through the forenoon?
A. Yes, sir.
Q. When did your brother Axel go away, if he went away at all?
A. About 9 o'clock.
Q. He went away from the store?
A. Yes, sir.
Q. Was you there when he went away?
A. Yes, sir.
Q. Did he take any goods with him?
A. No, sir.
Q. Did he come back any more to the store that forenoon?
A. No, sir; he did not.
Q. Do you know when he did come back?
A. He came back that afternoon one time.

158 Q. Was you in the store after the 31st, in your shop?
A. Yes, sir.
Q. What day?
A. The 2nd day of January.
Q. Who was there then?
A. Mr. Hopping, the deputy marshal; I think he was alone when I came in.
Q. Well, who came in there, if any one?
A. The United States marshal came in there.
Q. This gentleman here?
A. Yes, sir.
Q. He came in there?
A. Yes, sir.
Q. About what time was that?
A. It was in the afternoon; I can't remember exactly the time.
Q. This gentleman here, is it?
A. Yes, sir.
Q. Mr. Denny you mean, do you?
A. Yes, sir; I don't know the name, but that gentleman.
Q. He came into the store; when was that?
A. It was in the afternoon; I can't exactly remember the time.
Q. That was the second day of January; what was he doing there, if anything?
A. He was talking with the deputy marshal.
Q. What deputy marshal?
A. Mr. Hopping.
Q. How long did he remain there?
A. I don't know how long he was there.
159 Q. Did you go out?
A. I — go out with our tools.
Q. Did Mr. Denny remain there when you went out?
A. I don't remember, because we was going out with the tools on the back door.

Cross-examination:

Q. What is your business now—what are you doing now?
A. Manufacturing jewelry.
Q. Have been ever since this trouble?
A. Yes, sir.
Q. Who are you in business with?
A. I am not in business with anybody.
Q. You are working for yourself?
A. Yes.
Q. Have you got a shop of your own?
A. Well, this is for my own in Minneapolis.
Q. Do you run your own business?
A. Yes, sir.
Q. And you have been working at that business and carrying on the jewelry business there for yourself ever since this property was seized?
A. Yes, sir.

Q. Were you a member of the firm of Van Norman Bros.?
A. Yes, sir.
Q. Were you a partner in that business?
A. No, sir.

Mr. MERRICK: He don't understand.

160 Q. You were not a partner there?
A. No, sir.
Q. You were paid $500 by the concern on the night of the 29th of December, were you not?

Objected to as immaterial and incompetent. Objection sustained. Exception by defendant.

Counsel for defendant offers to show by the witness that on the 29th day of December he drew from this concern the sum of $500.

Same objection, ruling, and exception.

H. R. DENNY, sworn and examined on behalf of the plaintiff, testified:

Direct examination by Mr. MERRICK:

Q. Are you the United States marshal of this district?
A. I am.
Q. Was you on the 31st day of December?
A. I was.
Q. Who were your deputies at that time?
A. I had several. I suppose you wish to know particularly.
Q. Mr. Hopping?
A. Mr. Hopping was deputy at that time.
161 Q. Major Brackett one?
A. Yes, sir.
Q. You went to Minneapolis when, with reference to this?
A. I went to Minneapolis on the 2d day of January.
Q. To take charge of this matter?
A. I went up there to see about it.
Q. And you visited the store?
A. I did.
Q. And came from there to my office, did you?
A. I did.
Q. You arranged for the taking away of the goods?
A. Not at that time.
Q. But you were up there seeing about them?
A. I was there to see about the stock; to see what had been done.
Q. And to see that everything was right?
A. Yes.
Q. To take charge of it?
A. Yes.
Q. Of the property that had been taken by you, by Mr. Hopping, as your deputy?

A. Of the property that had been taken on the writ of attachment by Mr. Hopping as my deputy.
Q. In what is called the Van Norman store, 419 Nicollet avenue?
A. Yes.
Q. And you then had charge of the store?
A. Well, I did, as marshal.

162 Cross-examination:

Q. What property did you take under that writ of attachment?
A. The stock of jewelry which was in the store at that time.
Q. Have you the inventory of it?
A. I have an inventory of it; yes, sir.
Q. Produce it, please.
A. Well, I haven't it with me.

Objected to as not cross-examination.

Counsel for defendant proposes to show the value of the goods taken.

Objected to as incompetent, immaterial, and not cross-examination.

Q. Produce your inventory and state what property you took.

Same objection.

The COURT: I have some doubt about it whether it is a proper question or not. I think I will sustain the objection.

Exception by defendant.

Counsel for defendant offers to show by the witness on cross-examination what property and the amount and value of the property which was taken by him and his deputies at the time and place referred to in his testimony-in-chief, and what articles claimed to be the property of the Van Norman Bros, the defendants in the attachment, were taken and carried away by himself and his dep-
163 uty, at the time and place testified to in his examination-in-chief.

Objected to as incompetent, irrelevant, immaterial, and not proper cross-examination.
Objection sustained and exception by defendant.

CHARLES C. BENNETT, recalled on behalf of the plaintiff, testified:

Direct examination by Mr. MERRICK:

Q. Mr. Bennett, in your testimony (yesterday, I think it was) which related to what occurred in the store of Van Norman Bros. when you went in there with your assignment and your bond, I ask you to state, for I didn't understand particularly, how you left this matter; what was said, if anything, to Hopping or Brackett at that time?
A. I don't remember particularly if I said anything to them, but

I demanded possession of all the parties what was there, and I produced my papers.

Q. Well, did you present the papers to any one?

A. I presented it to Peterson.

Q. Well, who next?

A. And then, if I ain't mistaken, I think that Mr. Hopping and Mr. Ringwald took the papers and read them through, and Major Brackett was also there.

Q. Did Mr. Hopping examine them more than once?

A. He did.

164 Cross-examination:

Q. Did you not swear positively on yesterday that you made no demand whatever on Mr. Hopping or any of the United States marshals?

A. I think I did.

Q. Was your statement yesterday true?

A. It was.

Plaintiff rests.

Counsel for defendant asks the court to note a motion to dismiss upon the ground that they have failed to substantiate the allegations of the complaint; that they have failed to show the commencement of a valid action, the due and proper issuance and levy of a writ of attachment, the facts necessary to make an assignment.

Motion overruled and exception by defendant.

Mr. O'Brien then opened the case to the court and jury on behalf of the defendant.

LEM. W. FLERSHEM, sworn and examined on behalf of the defendant, testified:

Q. Mr. Flershem, you are a member of the firm of Lapp & Flershem, of Chicago?

A. Yes, sir.

Q. Composed of yourself and who else?

A. Peter Lapp.

Q. What is the business of that concern?

A. Wholesale jewelry.

165 Q. Were you in business there during the year 1883?

A. Yes, sir.

Q. The firm is composed of yourself and Mr. Lapp?

A. That is all.

Q. Are you both citizens and residents of the State of Illinois?

A. Yes, sir.

Q. During the time that is spoken of?

A. Yes, sir.

Q. And are now?

A. Yes, sir.

Q. Do you know the Van Norman Bros. spoken of here in this case?

A. I met Mr. Axel Van Norman in September, 1883.
Q. You know the concern in a business way?
A. Yes, sir.
Q. The same concern that has been spoken of here as the Van Norman Bros.?
A. Yes, sir.
Q. Doing business in Minneapolis?
A. Yes, sir.
Q. Were they residing in this State during the time I have spoken of?
A. Yes, sir.
Q. Now, let me ask you if your concern ever sold and delivered any goods to them?
A. We did.
Q. When?
A. In September or October and November and December of 1883.
166 Q. Aggregating how much in value?
A. The amount we sold?
Q. Yes, sir.
A. $4,025.70.
Q. Have those ever been paid for?
A. There has been $250 paid on that.
Q. Leaving how much due?
A. $3,775.70.
Q. Did you cause an action to be commenced in the circuit court?
A. I did.
Q. For the recovery of that amount?
A. Yes, sir.
Q. Last December?
A. Yes, sir.
Q. That was the same action spoken of here under which the marshal made this seizure?
A. Yes, sir.
Q. That claim still remains unpaid, does it not?
A. It does.

No cross-examination.

JAS. C. MORELAND, sworn for the defendants, testified:

By Mr. O'BRIEN:

Q. Where do you live?
A. Osage, Iowa.
Q. What is your business?
A. Traveling salesman.
167 Q. For whom?
A. Messrs. Lapp & Flershem.
Q. The same firm that the last witness testified to?
A. Yes, sir.
Q. How long have you been in their employ?

A. Not quite three years.
Q. Does your route lead you into Minneapolis?
A. Yes, sir.
Q. Have you the Minnesota department of that house, among others?
A. Yes, sir.
Q. Do you know the two Van Normans spoken of in this case here?
A. Well, I know Mr. Axel Van Norman; I have met them both, I think.
Q. State whether or not you sold them the goods spoken of by Mr. Flershem.
A. I sold a portion of them.
Q. Of what did those goods consist?
A. Diamonds, fine Howard watches, Waltham watches, and gold chains, in the bill that I sold them.
Q. Prior to the 31st of December last or prior to the 29th of December last had you been frequently in the store of Van Normans, at Minneapolis?
A. No, sir; not frequently.
Q. You had been in there before, had you not?
A. I think the first time that I was in their store was in December last.
Q. What time of December?
A. Somewhere about the fifth.
168 Q. At the time you took the order for some of these goods?
A. I sold them and delivered the goods there.
Q. On the 5th of December?
A. Yes, sir.
Q. To what amount?
A. $2,500, I think, or thereabouts.
Q. What class of goods were those?
A. Those were the goods that I just mentioned—fine Howard watches, fine Waltham watches, and fine ladies' gold watches and diamonds and gold chains.
Q. You sold and delivered those goods to them on the 5th of December?
A. Yes, sir; I think it was the 5th.
Q. Some $2,500 worth?
A. Something over $2,500.
Q. Now, at that time did you observe the condition of their store?
A. Yes, sir.
Q. And the general appearance of the stock?
A. Yes, sir.
Q. Are you familiar with the jewelry business in its different branches and the different articles?
A. Well, somewhat.
Q. You have been in the business how long?
A. Well, I have handled jewelry since 1857 in a retail and wholesale way.
Q. What, in your judgment, was the value of that stock?

A. Well, I think——

169 Q. Adding your $2,500 worth of goods to it.

A. If I remember right, I wrote the house that the stock was worth somewhere about, I should say, $20,000 to $25,000.

Q. At that time?

A. That is my recollection.

Q. Was that your judgment?

A. Well, I should say that there was about that many goods there.

Q. What was the character of that stock as to being fine goods, fine articles, high class of stock?

A. Well, it would average very well indeed with a city stock, I should think. It would be called a first-class stock?

Q. Now, when were you in there again, or were you there from time to time up to the 29th of December?

A. No, sir; I wasn't there again until, I think, the 28th.

Q. What did you say, sir?

A. The 28th of December was the first time after that.

Q. What was the occasion of your visit there then?

A. I went there by request of the house.

Q. For what purpose?

A. For the purpose of trying to get back some of the goods that we had sold.

Q. Now, who did you see there at that time?

A. Mr. Axel Van Norman and some gentleman that was working for them I don't know—a watchmaker.

Q. Was there anybody in your company?

A. Not on the 28th, there was not.

170 Q. What took place at that time between you and Axel Van Norman?

A. Well, we had some talk about the goods.

Objected to as immaterial and incompetent.

Exception by defendant.

Objection sustained.

Q. What was the condition of the stock of goods at that time?

A. On the 28th?

Q. Yes, sir.

A. Well, the stock was in very fair condition, but not nearly as large as it was on the 25th; I should judge not much over half as large.

Q. State whether or not you noticed any goods there on the 28th that you recognized and identified.

A. Yes, sir; I recognized quite a number of articles in diamonds; ear-drops and studs and rings; and also several fine watches that we had sold them.

Q. Some of these were included in the lot you had sold them on the 5th of December?

A. Yes, sir.

Q. About to what extent—amount in value—did you recognize your goods there—Lapp & Flershem's goods?

A. Well, I should say there must have been somwheres from a

thousand to $1,500 worth of the goods—that is just a rough estimate—that we sold them.

Q. Consisting of what classes—diamonds, you say?

A. Diamonds and fine watches and gold chains.

Q. About how many fine watches were there there of your goods?

171 A. Well, I couldn't say to the exact amount; I didn't count them; there was quite a number of fine watches.

Q. Did you at that time observe other articles among the stock that you recognized, and coming from other sources; other articles of that class—diamond articles?

A. Yes, sir; I observed some diamond bracelets that we had quite a talk about—Mr. Van Norman and I. I remember them very particularly on that account. I talked to him in regard to cutting down a pair of bracelets for me.

Mr. MERRICK: Well, we object to any conversation.

Q. Now, when did you go there again?

A. Friday.

Q. That was the 29th?

A. Yes, sir; Friday was the 28th.

Q. Went there again on Saturday?

A. Yes, sir; I went there in the morning.

Q. Anybody with you?

A. I met Mr. Ringwald after I had been there a short time.

Q. Well, what was the condition of the stock then?

A. Well, about the same as it was Saturday, I should judge, or about the same as it was Friday.

Q. Did you recognize these articles?

A. Yes, sir.

Q. Were these diamond bracelets still there?

A. I think they were.

Q. And you found no appreciable difference; you recognized about the same quantity of goods?

172 A. I didn't notice any change in the stock.

Q. How late were you there on Saturday?

A. I was there all day, up to perhaps 5 or 6 o'clock.

Mr. O'BRIEN: Now, I propose to show by this witness that he was there pressing for his claim.

Objected to as incompetent and immaterial.

The COURT: Just what do you propose to show?

Mr. O'BRIEN: I propose to show by this witness that on the 28th, on the 29th of December he was there insisting on Van Norman surrendering those goods or making some effort to pay this claim of Lapp & Flershem, and informed him of the proceedings that would be taken to enforce it.

The COURT: Well, I am inclined to think it is proper to show that fact.

Same objection and exception by plaintiff.

Q. For what purpose were you there on that Saturday?

A. For the purpose of trying to get some of the goods back that we had sold them, or getting the pay.

Q. Did you state that purpose to those men?

A. Yes, sir; to Mr. Van Norman.

Q. Now, what was said between you in that matter?

Objected to as incompetent and immaterial.

The COURT: I don't think you can go into the conversation except as to the mere fact that he was pressing for the claim.

173 Mr. MERRICK: That he was there urging his claim we admit.

Mr. O'BRIEN: I now offer to show by the witness that at that time he notified Mr. Van Norman that the claim of Lapp & Flershem would be pressed unless there were steps taken to secure it, and that Van Norman replied that if a compromise for fifty cents on the dollar could not be effected he would make the assignment; that he had employed Mr. Merrick, of the firm of Merrick & Merrick, to go to Chicago (and had paid him $400 to go down there) to effect this compromise; that he had selected his assignee to whom he would make the assignment in case the negotiations failed, and that he would have arranged the matter had he not gone into this enterprise of effecting a compromise, but having started into that and sent his attorney down to Chicago for that purpose he proposed to carry it through.

Objected to as incompetent, irrelevant, and immaterial. Objection sustained and exception by defendant.

Q. Now, how late were you in there on that Saturday?

A. I think up to 5 or 6 o'clock; I have forgotten just the time.

Q. What was the condition of the stock then?

A. About the same as it was——

Q. Did you observe at that time and recognize the quantity of articles belonging to your house that you testified you saw there on the 28th?

174 A. Yes, sir.

Q. And the different classes, watches and diamonds and other articles of that kind?

A. Yes, sir.

Q. Now, when were you in that store again?

A. Monday, about four o'clock, I think.

Q. In whose company did you go there?

A. With yourself and Mr. Hopping and Mr. Ringwald.

Q. That was the time of the levy of the writ of attachment, wasn't it?

A. Yes, sir.

Q. Now, Mr. Moreland, when we got in there what took place?

A. I think you said to somebody (we found the sheriff there, or deputy sheriff), and you asked him if he had charge of the store, and he said he was there under a writ of attachment, I think, in the interest of Purdy & Co. You asked him what amount; I think

he said $525; and you asked him, I think, if he intended to hold the entire stock on that $525.

Mr. MERRICK: Wait a moment. How is that material?
The COURT: I think it is proper.

Q. Go on, sir. What reply did you make to that?
A. He said that he wanted to satisfy his writ of attachment. And then you ordered the marshal, I think, to attach the balance of the stock, subject to this writ of attachment. He went to work then and laid out some—well, all the watches, I believe, that was
175 there, some $1,300 worth, and says, "Now, that will satisfy my claim, and you can go ahead." That is my remembrance.
Q. Now, I want to ask you, at that time what was the condition of that stock with reference to the condition you left it in on the Saturday night before?
A. Well, I should think there wasn't half of the stock there. I spoke to Mr. Hopping and Mr. Ringwald at the time, and told them it wouldn't cover our claim if we had all the stock; not any more than that.
Q. Now, what class of goods did you miss?
A. Well, all the fine goods were gone.
Q. Were all the fine goods gone?
A. There wasn't anything there but one pair of cuff buttons that I would recognize as being our goods; they were not there on Monday.
Q. Now, on Saturday you saw your goods there to the amount you have stated?
A. Yes, sir; I saw what I took to be our goods.
Q. Watches and chains to the extent of some $1,500?
A. Yes.
Q. And diamonds? Now, those were all gone on Monday at 4 o'clock?
A. Well, all those fine goods were gone; didn't see any of them after that.
Q. How many of your goods were left remaining there that you recognized on Monday?
A. I only saw the one article that I remember, and that was a pair of cuff buttons.
Q. Worth how much?
A. About three dollars.
176 Q. The rest had disappeared?
A. The rest wasn't in the stock.
Q. Now, how was the stock as to the other fine goods not from your house, these diamond bracelets and other matters?
A. Well, in fact, there was no fine goods left there; I don't know that there was one solid gold watch left there; I couldn't say now that there was; I think there was some filled cases; there might have been probably a lady's watch. My recollection is, if any, there was very few gold watches left there.
Q. You are now speaking of other watches left by other people?
A. Yes, sir.

Q. What would be, in your judgment, the difference in value between the stock as you saw it on Saturday and Monday at 4 o'clock?

A. Well, I should say somewhere from $5,000 to $7,000 difference in value.

Q. The fine goods were all gone?

A. The fine goods were all gone.

Q. Now, Mr. Moreland, did you find any empty trays under the counters?

A. Yes, sir; there was quite a quantity of empty trays. I think they found some in the safe and a lot on the counter.

Q. What was the use of those trays?

A. Well, trays that were used generally in show-cases for
177 watches and rings and charms, and such things as that—regular jewelry tray, such as they use in cases for displaying goods.

Q. Were the cases filled when you were there on Saturday?

A. All that I saw were filled.

Q. How were they on Monday?

A. Well, what few cases were in the trays, I guess, were filled.

Q. I say were the show cases filled with these trays, and did these trays contain articles on Saturday?

A. Yes, sir; as far as I remember.

Q. And on Monday they were not there?

A. No, sir; not all the trays; the trays, quite a quantity of them, were empty.

Q. Now, Mr. Moreland, what, if anything, did you do towards making an inventory of the goods there that were seized by the marshal?

A. Well, I simply gave prices, as best I could; the marshal requested me to do it.

Q. Did you assist in making the inventory?

A. Nothing more than in giving prices.

Q. Were you present when it was made?

A. Yes, sir; a part of it.

Q. Who made the inventory?

A. Mr. Ringwald, I think, and I don't know but Mr. Merrick. I think young Mr. Merrick assisted in some part of the inventory; he did some writing.

Q. Did you remain there all the time?

A. I remained there until in the evening some time; I have forgotten just when; somewhere about 10 o'clock.

178 Q. Was the marshal's inventory finally made before you left—was it completed?

A. I think it was about completed.

Q. Now, sir, was that, to your observation, a true inventory of everything that was there?

A. Well, it was, as far as I know.

Q. As far as numbers and articles were concerned?

A. Yes, sir; and prices, as nearly as possible. I believe Mr. Axel Van Norman helped give some prices.

Q. Did you see a safe there?

A. Yes, sir.

Q. Do you know anything about its condition, as to whether its inner doors were locked or not?

A. I think some of the drawers were locked, perhaps.

Q. Did you hear any demand made for a key?

A. Well, I heard some one ask for keys.

Q. Was it got?

A. I think not; I think the drawers were left locked.

Q. Just as they were?

A. Yes.

Q. Well, after these occurrences on this Monday night you had nothing further to say in the matter?

A. No, sir; I wasn't there after that.

Q. Were you there when the assignee came in and made his demand?

A. Yes, sir.

Q. What time was that?

A. Well, it must have been somewhere about 10 o'clock—no, perhaps, it was earlier than that; come to think, I guess it was—I guess it was along about 8 o'clock.

179 Q. Now, Mr. Moreland, is there any question in your mind (you were up there at that place)—is there any question whatever in your mind as to the fact that between that time Saturday, when you were in that store, and Monday at 4 o'clock there were between four and seven thousand dollars' worth of goods taken out?

Objected to as incompetent.

Q. What I mean is whether you have any question or doubt in your mind as to these facts you have testified as to the disappearance of those goods between those dates?

Objected to as improper.

A. No, sir; there is no doubt in my mind.

The COURT: I understand him to ask, in substance, if he is certain that there is this difference in the goods between Saturday night and Monday morning.

Mr. O'BRIEN: That is what I mean.

Q. Are you certain of it?

A. I am positive.

The COURT: I will permit the question in that way.

Q. Go on.

A. I am positive that the greater part of the fine goods were taken out by some one.

Q. And that they were not in that store when you went in with the marshal for the first time on Monday afternoon?

A. No, sir; not that I saw.

180 Q. And you looked for them?

A. Yes, sir.

Q. If they had been there you would have found them, wouldn't you?

A. I think I would have been apt to see some of them.

Q. When did the marshal commence to take this inventory?

A. In a very short time after we got there.

Q. Immediately after four o'clock?

A. Well, somewhere, I suppose——

Q. What was the condition of that inventory when the assignee got there, whether or not the marshal had completed his inventory?

A. I don't remember whether it was entirely completed or not, at that time, but I hardly think it was quite complete.

Cross-examination by Mr. MERRICK:

Q. The first bill of goods you sold was the fifth of December?

A. I only sold them the one bill.

Q. Well, I say that was the first time you had dealt with them?

A. Yes, sir.

Q. You sold them $2,500?

A. A little over $2,500.

Q. And then you say that you think they had stock of how much?

181 A. Well, from $20,000 to $25,000, I should judge, including the goods they bought of me.

Q. Now, don't you know, as a matter of fact, Mr. Moreland, that all the purchases from the time they commenced business in August until the store was shut up didn't exceed $17,000?

A. I don't know that, sir.

Q. You don't know it?

A. No, sir.

Q. But if it so appeared it would vary your opinion, wouldn't it?

A. That might be; I just simply give mine as an opinion.

Q. It was a nice store—appeared well?

A. Very nice-appearing store.

Q. You had no suspicion, did you, or anything, then?

A. Well, I did look it over with a view of writing the house what amount of goods I thought they had.

Q. And you thought it was worth $25,000?

A. Well, that their stock would range from $20,000 to $25,000.

Q. Did they have a large amount of diamonds at that time?

A. Yes; they had a very nice stock.

Q. Well, about how many?

A. I couldn't—that is a very hard question to answer.

Q. About how many fine gold watches?

A. I just simply glanced them over.

Q. About how many diamonds in value now did they have?

182 A. Well, that would be a very hard question to answer; I just simply lumped the stock.

Q. Can you guess at that as near as you guessed the value of the stock?

A. I could make a pretty good guess.

Q. Well, guess at it.

A. I should say probably $5,000.
Q. Would you swear that that was within $2,000 of being correct?
A. No, sir; I wouldn't swear to it at all.
Q. Well, then, you might guess it was $2,000; would you swear that there was $2,000 there in diamonds?
A. Yes, sir.
Q. You would swear to it?
A. Yes, sir.
Q. Just describe the diamonds, some of them, how you make that up.
A. Oh, they were in rings and ear-drops and studs.
Q. Did you take any memorandum of them?
A. No, sir.
Q. This is mere guess-work, isn't it?
A. Yes; just an estimate.
Q. Well, now, you didn't see the stock of goods again until when?
A. The 28th, I think.
Q. Now, haven't you sworn once before that you didn't go in there until the 29th? Haven't you so stated under your own signature that you didn't go there after the 5th?
183 A. I swear that I was in there on the 29th, but I was in there on the 28th also.
Q. Didn't you swear——
A. No, sir.
Q. So your affidavit that you once made was incorrect in which you swore that you didn't go there until the 29th?
A. No, sir; I was there on the 29th.

Objected to.

Q. Did you so swear?
A. I think I swore I was there on the 29th.
Q. Well, whatever you swore to in your affidavit was correct?
A. That was correct—yes, sir; and I was there also before.
Q. If you swore in your affidavit that you didn't go there from the 5th until the 29th, that was correct, wasn't it?
A. Well, I don't think I swore that I didn't go there; I swore I was there; I think you will find my affidavit that way, too.
Q. Well, on the 28th or 29th you went at the request of your firm, did you?
A. Yes, sir.
Q. You was informed that this concern was insolvent?
A. Yes, sir.
Q. Unable to pay their debts?
A. That they were in trouble.
Q. Couldn't pay their debts you mean, don't you?
184 A. Well, they told me they were in trouble, and go there and see what I could get; get some of the goods back if possible.

Q. You were satisfied that they were in trouble when you went, weren't you?

A. Yes, sir.

Q. You went there to seek a preference, didn't you?

A. I went there to get our goods.

Q. To get the pay for your firm, no matter what the others got; that was what you went for, wasn't it?

A. To prevent somebody else.

Q. To get the pay for your firm, dollar for dollar?

A. Yes, sir.

Q. Without regard for others?

A. No; I wasn't on business for others; only our own firm.

Q. You wanted to get a preference, didn't you; that is the thing of it, isn't it?

A. I suppose so.

Q. Well, so you went to seek a preference; you knew what the assignment law was, didn't you?

A. No, sir.

Q. But you went there to get this preference?

A. I went there to collect our claim, if possible.

Q. Dollar for dollar?

A. Certainly. I wouldn't go there to collect 25 cents or 10 cents.

Q. Didn't you try to get this firm to turn over to you not only the goods you had sold them, but the goods of other parties?

185 A. No, sir.

Q. You didn't?

A. No, sir; I simply asked them if they wouldn't give us back some of the goods that I sold them. I never asked them for any other parties' goods. I would have been very glad to get back our own.

Q. You were trying to get it secured, weren't you?

A. Well, you may call it what you are a mind to. I was trying to get our pay.

Q. Well, you knew you couldn't get it in money, didn't you?

A. Well, it looked that way.

Q. How did you expect to get $4,000, except you took the goods of other parties?

A. We would, of course, have taken other goods if we could have got them.

Q. That is what you were there for, wasn't it?

A. I was there to get the pay.

Q. You was in there the 29th and examined the goods?

A. Yes, sir.

Q. You was in there the 28th, and the store was about the same condition the 29th that it was the 28th?

A. Well, I should judge so.

Q. What?

A. Yes, sir.

Q. Haven't any doubt about that, have you?

A. No, not particularly; on the 28th and 29th I didn't see any particular difference.

Q. You was there in the evening. Were there any vacant places in those show-cases on the 29th?

186 A. I don't remember of any; I don't remember of seeing any.

Q. Were there any when you went in there on Monday with your crowd?

A. Yes, sir.

Q. Were there any vacant place in the main show-cases?.

A. I think there were.

Q. You think there were?

A. I wouldn't be positive about that.

Q. Would you swear to it now?

A. I think there were.

Q. Well, will you swear to it?

A. To the best of my judgment—yes, sir.

Q. You will guess at it, will you?

A. It is the best of my judgment.

Q. You found some old trays under the counter; you will guess there was some gone out of the main case; is that what you mean?

A. No, sir; I didn't mean that.

Q. But you won't swear that there were any vacant places in the main show-cases?

A. I think there were.

Q. Well, now, will you tell us what diamonds were there on Saturday, the 29th? Just give us the list of them.

A. Well, I couldn't give you a list of them particularly.

Q. Oh, do now, just to favor the jury. You are an expert here.

A. Well, I didn't go into the——

Q. Well, that is what we want.

187 A. Well, I dare say you want it, but I couldn't give it to you.

Q. How many watches were there there of all kinds and grades on the 29th?

A. That is a pretty hard question to answer.

Q. Well, can you give us within fifty? Let's come right to business now; life is short. Can you guess within fifty?

A. Oh, I should say there were probably 25 or 30 filled cases and what appeared to be gold watches.

Q. Well, how many gold and silver, good, bad, and indifferent—now, you are an expert, you know what the value is?

A. I don't claim to be an expert, understand me; you haven't heard me say so.

Q. But tell me on what you based your opinion, now, on Saturday night?

A. By general appearances.

Q. Well, how many were there there?

A. Well, I couldn't say how many; I didn't count them.

Q. There was $10,000, wasn't there, Saturday night in stock?

A. Well, that is what they estimated the stock at, and I should judge it probably wasn't very far from that.

Q. Are you estimating that at the cost price?

A. I am estimating it on what Mr. Van Norman told me himself. He said that they just invoiced it, and it would run about $10,000 and fixtures $1,000.

188 Q. Now, didn't he tell you that he took this invoice on the 24th day or December?

A. I have forgotten whether he said the invoice——

Q. Didn't he tell you he took this invoice on the 24th day of December, just before the attorney went to Chicago?

A. I couldn't say as to that. I don't remember. He just simply told me that they had taken an invoice recently, and their stock amounted to $10,000 and fixtures about $1,000, and their indebtedness was some $16,000.

Q. Well, you know that to be correct, don't you?

A. Well, I supposed it was about—I had no reason to dispute it.

Q. Now, did you take notice of the fixtures there?

A. Well, not particularly.

Q. Some nice fixtures?

A. Very nice fixtures, yes, sir.

Q. New, weren't they?

A. New in appearance, yes.

Q. Elegant cases?

A. Very nice.

Q. As nice as there were in the city?

A. Yes, very nice cases indeed. It was a nice store.

Q. Everything was new, wasn't it—comparatively?

A. Yes, sir.

Q. The safe was a large safe, wasn't it?

A. Yes.

Q. For a jewelry store of that kind?

A. Quite a large safe, I should judge.

Q. Now, you didn't go back there until Monday night?

A. About four o'clock, I think.

189 Q. Something was said by the attorney about Monday morning; you wasn't there in the forenoon at all?

A. No, I wasn't there Monday at all. I went up with Mr. O'Brien.

Q. What time?

A. Somewhere about 4 o'clock, I should judge, when we got there.

Q. Who composed the party?

A. Mr. O'Brien, Mr. Hopping, and Mr. Ringwald and myself.

Q. Who did you find in possession of the store?

A. The deputy sheriff, I think. I saw him here; I didn't hear his name.

Q. Who went in the door the first of your party?

A. Well, I think Mr. Hopping, but I am not sure about that. We were all right together, and I don't know who did go in first.

Q. You waited in the alley, didn't you, you and Mr. O'Brien?

A. No, we wasn't any of us in the alley.

Q. Do you think Hopping went in first?

A. Well, I couldn't say as to that; I don't remember who went in first. I may have went in first, for all I know, but I don't remember now.

Q. Well, you went in there and you found the deputy sheriff of Hennepin county in charge, under a writ of attachment, of that store, didn't you?

A. Well, he claimed to be in there under a writ of attachment.

Q. In charge of the property, the store?

190 A. He said that he had attached.

Q. He said he was in charge of it, didn't he? Yes, sir; that is all right; said he was in charge—so notified you—yes, sir; that was about ten minutes past 4?

A. Somewheres near 4 o'clock; I don't know the time exactly.

Q. He told you he was in charge of it, didn't he; that he had taken an inventory?

A. He said he was there under a writ of attachment.

Q. Yes, sir.

A. Mr. O'Brien asked him by what authority he was there.

Q. Yes, sir; yes, sir; well, how soon after that did you commence taking the inventory?

A. Well, I cannot remember exactly; it was but a short time after.

Q. Yes; you commenced?

A. Well, I helped—I assisted.

Q. Now, who was this party of your party went to handling this valuable jewelry; who started in?

A. Mr. Hopping, I believe.

Q. Hopping went at it; what did Moreland do?

A. I assisted him, by his request.

Q. What did Ringwald do?

A. He took down the articles on paper, I believe.

Q. Well all three of you were back of the counter handling these goods, were you?

A. Were all over the stuff, pretty much.

Q. Different parts of the store?

A. Yes, sir.

191 Q. Looking up the goods?

A. Yes, sir.

Q. Picking up the goods?

A. Yes, sir.

Q. You were handling watches?

A. Well, I didn't handle many watches, because the sheriff had got all those; he had all the watches, I believe.

Q. Now, is that as true as anything you have stated?

A. I think he had all that was in the general stock.

Q. Now, isn't it true, as a matter of fact, that the sheriff hadn't taken over two-thirds of the watches in number?

A. Well, my recollection is that he took them all, but I couldn't say positively.

Q. Well, then, you don't know anything about it, do you?

A. Well, that is my impression.

Q. Do you have any recollection of there being any valuable gold watches there?

A. I think that some of the party found one watch in the safe,

and I believe Mr. Brackett handed it to me and wanted to know what such a watch was worth, and I looked at it and I told him I should judge that was a valuable watch, worth probably $250 or $275.

Q. Yes; which of the party put it in his pocket and said he would keep it until it was sold on execution?

A. I don't know; I didn't hear that; I handed it back to Mr. Brackett.

192 Q. I ask which of the party took that valuable watch and put it in his pocket and said he guessed he would keep it until sold on execution?

A. I didn't hear that.

Q. Then you saw one valuable watch?

A. That is the only one.

Q. Did you see more than one?

A. No; that is the only valuable watch I saw; that was in a buckskin or chamois bag, I think; they found it in the safe; I think Mr. Brackett found it.

Q. Now, you know, as a matter of fact, don't you, that the sheriff had laid out on the counter at cost value some $1,400 worth of watches?

A. About $1,300, I think he called it.

Q. Now, I want you to say to the jury whether, as a matter of fact, he hadn't taken over two-thirds of all he had of the gold watches.

A. Well, I said before, my impression was that he had all the watches or very nearly all.

Q. Did he have these valuable watches?

A. No; except that I said, he had all that was in the show-case or very nearly all of them.

Q. You are positive about that?

A. Yes, sir; that is my recollection of it.

Q. Do you know the number that he had?

A. No; I do not.

Q. Now, how many clocks were there there?

A. Well, I think there was somewhere about 80 or 100 clocks.

Q. Do you know how they were averaged?

193 A. I have forgotten about that; I am not posted in clocks.

Q. You are not posted much, are you?

A. No, sir; not in clocks.

Q. You don't know much about the value of that stock, do you? There are a hundred clocks and you cannot put the value on them.

A. That would be very hard to do; there is a vast range in clocks.

Q. Now, will you take the opera-glasses and give us an estimate on those?

A. I have forgotten about those; there was quite a number of those, I think.

Q. Now, will you give us an estimate on those?

A. If I could see them I could come nearer, perhaps.

Q. Well, if we could see the stock we could tell more, perhaps, but we are not permitted. So you cannot put an estimate on them?

A. No.

Q. Can't you give us an estimate of the number of solid gold rings that were in that stock?

A. No, sir; I couldn't.

Q. Of their value?

A. I have forgotten—oh, I would know about what they were worth a pennyweight.

Q. Do you know about what the cost price would be?

A. They are worth about eighty cents a pennyweight.

Q. Do you know how many pennyweights there were there?

194 A. No, sir; I don't know. It is a year ago, if you remember.

Q. How much silver-plated ware was there there?

A. I don't know.

Q. A good deal of that, wasn't there?

A. Well, there was quite a number of articles.

Q. A very good showing, wasn't there?

A. No; I shouldn't call it a good showing.

Q. For a small store?

A. No, sir; I should call it a remnant of a stock.

Q. You know the value of safes, don't you?

A. No, sir.

Q. Of that kind?

A. Well, I have but a very poor idea of safes; I have never dealt in them, and have never been fortunate enough to own very many, so I don't know much about the price of them. The safe they had there was quite a nice appearing safe.

Q. They don't sell these rings with settings in them by the pennyweight, do they?

A. Some do and some do not. Some houses sell them exclusively by the pennyweight.

Q. Did you go into the workshop?

A. No, sir; I wasn't in there.

Q. Well, who was in there while you was around there?

A. I don't know; they might all have been in.

Q. Did you know how many there were in the Hopping party?

195 A. There was Mr. Brackett, Mr. Hopping, and Mr. Ringwald.

Q. Well, who of that party went into the workshop?

A. I don't know of any of them going in there; they might have gone in and I not have noticed them.

Q. Do you know anything about their taking a fur robe there?

A. I didn't hear of any fur robe being there.

Q. Did you hear of any diamonds being out there on the worktable?

A. No, sir.

Q. Didn't hear of that?

A. No.

A. Did you hear of there being a valuable gold bracelet there?

A. No, sir.

Q. You don't know who went out there?
A. No, sir.
Q. Some of the party did go, didn't they?
A. I don't know, indeed.
Q. Well, did you see a fur robe there?
A. No, sir; I didn't hear of one being there, either.
Q. How late did you stay?
A. Well, it must have been about 10 o'clock; I think, perhaps a little after 10 o'clock when we left. We got back to this city somewhere about between 11 and 12 o'clock; I came back with Mr. Brackett.

Q. You didn't place any estimate upon the fixtures at all?
196 A. Well, now, it seems to me that I did. It seems to me I valued the fixtures somewhere about a thousand dollars—the entire fixtures.
Q. Well, irrespective of the safe?
A. The safe, I think, our understanding was——
Q. Well, not what your understanding was; I don't care anything about that; I am asking you if you valued the fixtures, irrespective of the safe, at a thousand dollars?
A. I think so, because the safe wasn't included; it wasn't paid for, as I understood it.
Q. You had possession there, didn't you?
A. Yes, sir; the marshal did.
Q. The marshal had possession of it?
A. Yes, sir.
Q. And you don't know what was taken in the back room?
A. I didn't hear of anything being taken in the back room, and I don't know that any of our party was in there.
Q. You say you did take a part in making sort of an inventory?
A. Well, my part was simply——
Q. You was caller?
A. Giving prices. When they would find anything they didn't know the price of they asked me.
Q. You didn't do any of the writing?
A. No, sir.
Q. You didn't read it through?
A. No.
197 Q. And you started in with setting down prices and then you abandoned that, didn't you?
A. Well, not until the heft of the goods were taken.
Q. Didn't you abandon it after you had called off some of the goods—give up putting down prices.
A. No, sir; I think not. I think the prices were given on most all the articles.
Q. Were the prices put down?
A. I think so.
Q. That is as correct as anything you have stated.
A. I think it is.

A. No.

Q. Can't you give us an estimate of the number of solid gold rings that were in that stock?

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Q. Of their value?

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A. I didn't hear of any fur robe being there.

Q. Did you hear of any diamonds being out there on the worktable?

A. No, sir.

Q. Didn't hear of that?

A. No.

A. Did you hear of there being a valuable gold bracelet there?

A. No, sir.

Q. You don't know who went out there?
A. No, sir.
Q. Some of the party did go, didn't they?
A. I don't know, indeed.
Q. Well, did you see a fur robe there?
A. No, sir; I didn't hear of one being there, either.
Q. How late did you stay?
A. Well, it must have been about 10 o'clock; I think, perhaps a little after 10 o'clock when we left. We got back to this city somewhere about between 11 and 12 o'clock; I came back with Mr. Brackett.

Q. You didn't place any estimate upon the fixtures at all?
196 A. Well, now, it seems to me that I did. It seems to me I valued the fixtures somewhere about a thousand dollars—the entire fixtures.
Q. Well, irrespective of the safe?
A. The safe, I think, our understanding was——
Q. Well, not what your understanding was; I don't care anything about that; I am asking you if you valued the fixtures, irrespective of the safe, at a thousand dollars?
A. I think so, because the safe wasn't included; it wasn't paid for, as I understood it.
Q. You had possession there, didn't you?
A. Yes, sir; the marshal did.
Q. The marshal had possession of it?
A. Yes, sir.
Q. And you don't know what was taken in the back room?
A. I didn't hear of anything being taken in the back room, and I don't know that any of our party was in there.
Q. You say you did take a part in making sort of an inventory?
A. Well, my part was simply——
Q. You was caller?
A. Giving prices. When they would find anything they didn't know the price of they asked me.
Q. You didn't do any of the writing?
A. No, sir.
Q. You didn't read it through?
A. No.
197 Q. And you started in with setting down prices and then you abandoned that, didn't you?
A. Well, not until the heft of the goods were taken.
Q. Didn't you abandon it after you had called off some of the goods—give up putting down prices.
A. No, sir; I think not. I think the prices were given on most all the articles.
Q. Were the prices put down?
A. I think so.
Q. That is as correct as anything you have stated.
A. I think it is.

OSCAR B. HILLIS, sworn and examined on behalf of the defendant, testified:

Direct examination by Mr. O'BRIEN:

Q. You are the clerk of the United States circuit court of this district, are you not?

A. Yes.

Q. Have you with you the records in that court in the case of Lapp & Flershem *vs.* Van Norman Bros.?

A. Yes, sir.

Q. There is such a case pending in that court, is there not?

A. Yes, sir.

Q. Will you turn to the first entry in the docket? That is, the appearance-docket, isn't it?

198 A. Yes, sir.

Q. That is one of the records in your court, isn't it?

A. Yes, sir.

Q. Book of original entry?

A. Yes, sir.

Mr. O'BRIEN: I offer in evidence page 576 of the appearance docket "C" of the United States circuit court for the district of Minnesota, together with the entries on that page.

Counsel for plaintiff objects to any of this testimony on the ground that it is incompetent, irrelevant, immaterial, and tends to no issue in this case.

Q. You have here, also, the other records of the court and papers containing the entire proceedings in the cause spoken of, haven't you?

A. Yes, sir; I have all the files in the term minutes of the court.

Counsel for defendant offers in evidence page 576 of the appearance docket "C" of the United States circuit court for the district of Minnesota, together with all entries thereon, in the case of Lapp & Flershem against Van Norman Bros., being the case pleaded in the answer.

Also offers term minutes of the testimony at the June term, 1884, of the United States circuit court touching the proceedings had in that action in open court.

And offers all the files and records in that case identified by the clerk as being the records.

Those offers are made for the purpose of substantiating the allegations made in the answer connected with that case.

199 Objected to as incompetent, irrelevant, and immaterial.

No question is made by plaintiff as to the authenticity of the records produced by the clerk in case they should become material, and no question as to what they show, the only question being whether they are admissible.

Pending argument on the objection, court took recess until 2 o'clock p. m.

Court convened at 2 o'clock p. m., and after further argument the court sustained the objection, and the defendant excepted to the ruling.

Mr. O'BRIEN: I want to make a precise offer. I want to offer every paper by itself and have the record complete. In the meantime, with your honor's permission, I will put another witness on the stand.

E. J. DAVENPORT, sworn for the defendants, testified:

Direct examination by Mr. O'BRIEN:

Q. Mr. Davenport, are you the clerk of the district court of Hennepin county?

A. I am.

Q. Were you such clerk during the last year?

200 A. Yes, sir.

Q. And in December last?

A. Yes, sir.

Q. Do you know anything about this assignment, a certified copy of which is here—the assignment of the Van Norman Bros. to C. C. Bennett?

A. I do.

Q. Dated on the 31st of December, 1883?

A. Yes, sir.

Q. When was that assignment delivered to you?

Objected to as incompetent, irrelevant, and immaterial, and that the witness cannot contradict the record.

The COURT: What do you propose to show by this witness?

Mr. O'BRIEN: I propose to show by this witness that this assignment was not filed in his office until the 1st day January, 1884, but to show that it was delivered to him at his house, at a private residence, at half past 7 o'clock on the 31st of December, and that he was requested to file it in his office the next day.

The COURT: I don't think it is material.

(Exception by defendant.)

Mr. O'BRIEN: I propose to show by the witness that at that time no bond was delivered to him or filed in his office until the 2d day of January, 1884.

Same ruling by the court.

Exception by defendant.

OSCAR B. HILLIS, recalled on behalf of the defendant, testified:

201 Examined by Mr. O'BRIEN:

Q. Is this book the "term minutes?"

A. This book with the brown cover is the "term minutes" of the United States circuit court.

Q. Now, will you turn to that portion that shows the proceedings in this case of Lapp & Flershem against Van Norman Bros.?

A. What proceedings?
Q. Any of them.
A. The first order is page 263.

Mr. O'BRIEN: I offer in evidence page 263 of the "term minutes." I offer also in evidence page 269 of the "term minutes." I also offer in evidence page 292 of the "term minutes;" and also in evidence page 280 of the "term minutes;" and also page 297 of the "term minutes," (those being "term-minutes" F).

Q. You have got the files of the court?

(Files produced.)

Mr. O'BRIEN: I offer in evidence the complaint and the summons, with the return of service in the original action, the affidavit for attachment, the order for attachment, the undertaking for attachment, and the writ of attachment issued. I offer the order to show cause why the attachment should not be dissolved and five affidavits made upon the part of the defendants; also offer in evidence the order postponing the hearing of the order to show cause why the attachment should not be dissolved, and offer the an-
202 swer. I desire to offer in evidence the defendant's and assignee's affidavits on the order to show cause.

Also the affidavits on the part of the defendant; I offer in evidence the application and motion of Charles C. Bennett, the assignee, the plaintiff in this case, to intervene and to become a party defendant, and the order of the court granting that intervention.

Also offer in evidence the order to show cause, the order staying proceedings, and the order requiring the plaintiffs to serve copies of the affidavits on the defendant and the assignee. I offer in evidence the affidavits on the part of the defendants and of the assignee, including the affidavit of the assignee himself, and the exhibits; also the affidavits on the part of the plaintiffs. I offer in evidence the written notice of motion of assignee to dissolve. I offer in evidence the brief on the motion of the assignee to dissolve the attachment, and the plaintiffs' brief in reply; and I offer in evidence the order allowing the assignee leave to intervene as a party defendant. I offer in evidence the order denying the motion to dissolve the attachment.

Mr. LEVI: To all of which we object as being incompetent and irrelevant and immaterial.

Objection sustained, and defendant excepts.

It was agreed by counsel that the reporter should procure copies of the records so offered in evidence, if necessary, to be incorporated into this record. Such copies are hereto attached and marked for identification Exhibit "Z."

203 Q. Is that case referred to still pending and undetermined in your court?

Objected to on the same ground.

The COURT: I suppose the record would be the best evidence.

Mr. O'BRIEN: I offer the records in evidence for that purpose.

Mr. LEVI: We object to that also as incompetent, irrelevant, and immaterial.

Objection sustained, and exception by defendant.

E. S. GORMAN, sworn and examined on behalf of the defendant, testified:

Direct examination by Mr. O'BRIEN:

Q. Mr. Gorman, you reside in this city?

A. I do.

Q. Lived here how long?

A. Thirty years.

Q. What is your business?

A. Lawyer.

Q. Connected in business with me, are you not?

A. Yes, sir.

Q. Were you last December?

A. Yes, sir.

Q. Do you know the Van Normans, the defendants in the case of Lapp & Flershem against Van Normans?

A. I know of the firm. I have met the oldest brother of the firm.

204 Q. Did you visit their place in Minneapolis last December?

A. I did.

Q. Representing this claim of Lapp & Flershem?

A. Yes, sir.

Q. When was that—what was the date of it?

A. It was either the 27th or 28th of December.

Q. State whether or not at that time you had your attention called to their stock of goods.

A. I did.

Q. Were the defendants, Van Normans, in possession of it at that time?

A. They purported to be.

Q. Will you state what articles that stock consisted of or any portion of it?

A. Well, from my observation it consisted of a stock of jewelry consisting of diamonds and watches and rings and lockets and clocks and matters of that kind—ordinary stock of jewelry.

Q. Was your attention called to any particular articles?

A. Yes; during my conversation with the party there, supposed to be A. B. Van Norman, the oldest member of the firm, whom I supposed to be A. B. Van Norman, there was customers coming in and going out; and, in the mean time, while he was waiting on customers, I made a little memorandum of what stock I could.

Q. Have you got that memorandum?

A. I have; yes.

Q. Do you remember the day of the week this was?

A. It was on Friday, the 27th or 28th.

205 Q. It was the last Friday in December?

A. Yes, sir; it was the Friday before New Year's.

Q. Now, what were these articles that you made a memorandum of?

A. Well, this is a little slip of paper that I made the memorandum on at the time I was in the store. I saw what purported to be four dozen gold watches and five dozen silver watches and one case of what I supposed to be diamonds; I don't know—they looked like diamonds—had the appearance of diamonds. Three cases of rings and one case of lockets of different character, gold and silver and filigree work of different kinds. That is the principal portion of his stock that I saw there at the time.

Q. Where were they contained?

A. These were in the show-cases nearest to the street.

Q. Now, did you visit that place again prior to the levy of the attachment by the marshal?

A. I did not.

Q. But you identified those things in the way you describe?

A. I was leaning over the show-case.

Q. And made the memorandum?

A. Made the memorandum, looking in right over the articles within a foot and a half of them.

Mr. O'BRIEN: Now, I offer to show by this witness that these Van Normans made the same statement to him that if they didn't compromise for fifty cents on a dollar they would make the assignment.

Same objection, ruling, and exception.

206 Mr. O'BRIEN: This is offered for the purpose of showing that this assignment and attachment were not made in good faith.

Same objection, ruling, and exception.

Cross-examination by Mr. MERRICK:

Q. How long have you been in the jewelry business?

A. I never was in the jewelry business.

Q. You were entirely unacquainted with the different values of jewelry?

A. Yes, sir.

Q. You merely went up there on Friday, the 28th?

A. Yes, sir.

Q. Went into the store, and you took this memorandum?

A. Yes, sir.

Q. How many more watches were there than what you have on your memorandum?

A. I don't think there were any more; I don't think there were any more in the show-cases.

Q. What else did you see there?

A. Well, there was a lot of miscellaneous jewelry that I couldn't

describe. I don't know what they would call it. There was chains.

Q. Did you see any opera glasses?

A. I don't know that I did.

Q. See any gold chains?

A. Yes; I think so; I saw one case of rings.

Q. Did you see any plated ware?

A. Well, I presume it was plated ware.

207 Q. Did you see any fancy articles?

A. Quite a number.

Q. Toilet sets?

A. I don't know that I did.

Q. You didn't pay much attention to it, did you?

A. I paid pretty close attention to what was in the show-case.

Q. Which show-case was it?

A. Well, the watches were in the one nearest to the street, and I think the diamonds and lockets and rings were in the second show-case from the street.

Q. Now, wasn't it a matter of fact that the watches were in the show-case nearest to the street and in the one next to it; weren't they in both those show-cases?

A. Well, I don't know that there was but one show-case there; it may have been divided into compartments.

Q. How many show-cases were there in the room?

A. Well, it may have been two or it may have been one; it may have been divided off into compartments that looked like two.

Q. Might there not have been three?

A. There may have been a very small one.

Q. Isn't it a fact that across the rear of the room there was one considerable-sized show-case?

A. Yes.

Q. Isn't it true that on the counter in the front part extending from the window part that there was a show-case, and from there to the rear part there was another large show-case?

208 A. Well, it run down this way and then again that way.

Q. Wasn't that three show-cases?

A. It may have been three or it may have been one divided into compartments.

Q. Will you say that there was not a large number in that large show-case?

A. No, sir; there was none.

Q. About what time of day?

A. About this time of day (about 4 o'clock).

Q. Is that as true as anything you have sworn to?

A. Yes, sir; about half past 3 or half past 4 I was there.

E. RINGWALD, sworn on behalf of the defendant, testified:

Direct examination by Mr. O'BRIEN:

Q. You reside in this city?

A. Yes, sir.

Q. You are in the employ of our firm, are you not—O'Brien & Wilson?

A. Yes, sir; have been.

Q. You were last December?

A. Yes, sir.

Q. Are you the Mr. Ringwald that has been spoken of as being along with Mr. Moreland and Mr. Hopping when they were up there and made this seizure?

A. Yes; I was there.

Q. Had you been up there before?

209 A. Yes, sir; I was up there Saturday, the 29th.

Q. Did you see the condition of the stock of goods at that time?

A. Yes, sir.

Q. Could you tell what it contained generally?

A. I know some particular items that were there.

Q. What were they?

A. A couple of diamond bracelets.

Q. Did you see other diamonds about there—diamond rings?

A. I don't know but what I did, but I took particular notice of those bracelets.

Q. Where were they?

A. In the show-case.

Q. Now, you went up there again with the marshal, did you not?

A. Yes, sir.

Mr. O'Brien: I make the same offer to prove by this witness the same declarations to him as to the former two witnesses in relation to making the assignment.

Same objection; same ruling and exception.

Q. Now, you went up there on Monday with the marshal and myself, did you not?

A. Yes, sir; Monday afternoon, at half past 3, left here.

Q. The testimony is you got there about 4 o'clock?

A. That is true.

Q. Go on and state what took place when you got into the store.

A. We got to Minneapolis at 4 o'clock, on the Manitoba

210 road; took a carriage and drove to the Van Normans, on Nicollet avenue, I believe it was, and the party consisted of Mr. O'Brien, the deputy marshal, Mr. Moreland, and myself. One of us knocked at the door. We got to Van Norman's store and found papers pasted across the windows, and the door was locked. We knocked at the door and it was opened; we went in. Mr. O'Brien, I think, acted as spokesman and asked the gentleman in charge who he was and what he was. I believe he said he was a deputy sheriff, and was in charge of the place. Mr. O'Brien asked him to let him see his writ. He produced a writ, commanding him to levy—secure $525. Mr. O'Brien then announced that he introduced—he first introduced the United States marshal and said that

the marshal would levy on the entire stock, subject to the rights of the sheriff—subject to his previous levy—which was done. Mr. O'Brien then went away and we requested the deputy sheriff to start to make his inventory. He said something about not knowing what the value was, so Axel Van Norman was there and picked out the watches, one by one. I am quite sure they were all the watches in the show-case, and picked them out. I took the inventory. The deputy sheriff requested me to write—take the inventory—write it down—I don't know why—and I did the writing. Mr. Van Norman did the—picked out the watches, and they were turned over to the sheriff as they were picked out and inventoried. After that, as soon as that was done, well, he (the sheriff) insisted in going on, and we thought, when the property inventoried to about $1,000, we thought it was about time that he would have enough. We
211 suggested it to him also. "Well," he said, "he didn't know." He said he proposed to take all the watches. Well, he took them all; they amounted to some $1,300, I believe, at their cost price; the value was given by Axel Van Norman. We then proceeded to make an inventory of the balance of the stock. The marshal—I acted then for the marshal. The deputy sheriff had charge of those trays containing the watches at the head of the show-case, and that is all he was in possession of. He stayed right by them and watched them. If any one went to go near them he went also.

Mr. LEVI: I ask to have that last statement stricken out, "That is all he was in possession of."

WITNESS: That is all he claimed to have possession of.

Mr. LEVI: I ask to have both statements stricken out.

The COURT: I don't think it is very material in any aspect of the case. It is not of enough importance to spend any time over.

Q. You and Mr. Hopping and who else were engaged in making the inventory for the marshal?

A. Well, I think Mr. Moreland; also the watchmaker—somebody employed by Van Norman; he assisted us for awhile; and I think Axel Van Norman assisted us for awhile.

Q. When did you finally get the marshal's inventory completed?

A. Well, I think it was about half past 7 o'clock.

212 Q. You had a full inventory, then?

A. I think so.

Q. Who were present during all of that time?

A. Well, there was the marshal, Mr. Moreland, and I don't know what time Mr. Brackett came in.

Q. You mean Mr. Hopping?

A. Mr. Hopping and Mr. Moreland and myself, Mr. Brackett——

Q. Who of the Van Normans were there?

A. Well, Axel Van Norman was there a part of the time. The deputy sheriff was there, and I guess the watchmaker or some clerk employed there.

Q. Was that inventory, so made, a complete inventory of everything in the store?

A. When it was completed it was.

Q. You say it was completed about half past 7?
A. Yes, sir; I think it was about half past 7.
Q. And included everything you could find in that store?
A. Yes, sir; except it did not include the tools of the workmen.
Q. Those you didn't take at all?
A. Those we did not take.
Q. Now, were those diamond bracelets you saw in that store previous to this, there?
A. They were not.
Q. It has been testified to here that there were three watches in the drawer in that safe; is that true?
A. That is not true.
Q. What is the fact about that?
213 A. The fact is that after the deputy sheriff thought he had enough to satisfy his claim and we walked to the safe—I don't know but what it was Mr. Moreland, Mr. Brackett, and myself; it was three of us, anyway; I won't say positively the three—we went to the safe and opened the drawers—I didn't open them, I stood behind—and they pulled out this watch; they showed it to me, and also the bill.
Q. Was there more than one watch in the safe?
A. Not that I saw.
Q. And were there any diamonds in the safe?
A. None that I saw.
Q. Did they open all the drawers in that safe?
A. They did not.
Q. Why not?
A. A portion of them were locked.
Q. Was there any application made to anybody for a key?
A. I made application myself.
Q. To whom?
A. To Axel Van Norman.
Q. What did he say to that?

Objected to as incompetent. Objection overruled.

Q. What did he reply?
A. Well, he said he that knew nothing about it.
Q. He didn't give up the keys, did he?
A. He did not. I asked him who had the keys.
Q. What did he say to that?
A. He said he didn't know. His brother said he had them.
214 Q. Were those drawers in that safe opened, as a matter of fact, while you were there?
A. Not while I was there; no, sir.
Q. You remained until what time?
A. Until late in the evening. I guess I was about the last one to leave.
Q. Now, during the time that the deputy marshal and yourself were in that store, were you ever alone in that store during that evening—that is, your party?

A. No; I think not, until after we put Mr. Bennett out. I think we were alone after that—not until then.

Q. Were there any other persons in your party except those you have mentioned?

A. Not in our party; there was about a half a dozen deputy sheriffs in there after supper.

Q. How was it about Bennett—when did he come in?

A. About 7 or half past 7, I guess.

Q. Who came in with him?

A. I don't know—but both of the Merricks—but one anyway.

Q. How long did he stay?

A. Well, they staid and had some consultations, and he wanted to stay there all the time, wanted to stay for good. Got pretty late and I guess Mr. Merrick left and went home. There was nobody there but Hopping and Mr. Moreland, Mr. Brackett, myself, and Mr. Bennett.

Q. That was the time that he was led to the door and walked out?

A. Yes, sir; we were all put out.

Q. Who remained in?

215 A. The marshal.

Q. Mr. Hopping?

A. Mr. Hopping.

Q. You all left?

A. Yes, sir.

Mr. O'Brien: Now, I desire to prove that anterior to this day Axel Van Norman stated to the witness that he had employed Mr. Merrick to go to Chicago and to offer to settle with his creditors at fifty cents on the dollar, and that he had his assignee selected, and if the offer was not accepted he would make an assignment.

Same objection.

Objection sustained and exception by defendant.

Q. There has been some talk here about this man Bennett having the key to that store; did he have any key to that store?

A. Well, if he did he didn't use it while I was there.

Q. On the contrary, did Mr. Hopping have the key?

A. Yes, sir; Mr. Hopping always had the key. I believe there was a key sticking in the door. When it was understood that the sheriff was only in there for $525——

Mr. Levi: One moment; we object to that; we don't want the understanding.

Q. Regardless of the understanding, what was the result?

216 A. Well, the result was that I guess Mr. Hopping took the key out of the door and presided there himself.

Q. What became of the watches that the sheriff had levied on?

A. Well, they were laid aside. He had them up at the farther end of the show-case near the street, and I think Mr. Bennett came in then and demanded of him the surrender of the property he had. I don't know what the words were, but he surrendered them; and he asked him then, "Do you surrender this property?" He said,

"Yes," and he says, "Well, we come in next. I guess we will take an inventory of them."

Q. And they were added to the inventory?

A. They were added to the inventory.

Q. A full, true, and complete inventory was made of everything in that store that was taken?

A. To the best of my belief it was a true inventory.

Q. You said you saw no diamonds there at all?

A. I saw—I guess there were three or four little diamond rings.

Q. Were there any empty trays there?

A. Yes; there was quite a number under the counter and also in the safe.

Q. Trays that apparently contained goods?

A. Yes; velvet-lined trays.

Cross-examination by Mr. MERRICK:

Q. How old are you?

217 A. Something over twenty.

Q. You are in Messrs. O'Brien & Wilson's office, are you?

A. Yes, sir.

Q. You went up there Friday?

A. No, sir; I didn't go up Friday.

Q. It was the 29th you went up?

A. Yes, sir.

Q. At what time?

A. I don't really know what time. It was about 2 or 3 o'clock.

Q. In the afternoon?

A. In the afternoon.

Q. Who was with you?

A. I went all alone.

Q. You went all alone up there to that city?

A. Yes, sir.

Q. And you went up to the store of Van Norman Bros., 419 Nicollet avenue?

A. I think that is the number. I went to their store—the store they pretended to have.

Q. And you saw one bracelet there—one diamond bracelet?

A. Yes sir; one that I took notice of.

Q. Eh?

A. One that I saw.

Q. You saw one diamond bracelet?

A. Yes, sir.

Q. And you never saw it any more?

A. I never saw it any more?

218 Q. Did you take any memorandum of what you saw there—the goods you saw there on Saturday, the 29th?

A. I did not.

Q. Can you tell where the watches were located?

A. I have an idea where they were located.

Q. Well, can you tell—I don't want any guess-work, but I want you to tell the jury where they were located?

A. Well, my impression is that they were located in the forward show-case.
Q. None in the next case—the second case?
A. None that I could remember of.
Q. Where were the diamonds located?
A. In the forward show-case.
Q. Eh?
A. They were in the same show-case with the watches.
Q. There were no loose diamonds?
A. None that I remember of seeing.
Q. Well, you would remember, wouldn't you?
A. I don't know whether I would or not; I didn't know it would come to this; probably I might have remembered if I had.
Q. Well, you saw them again on Monday, and you remember distinctly that one article—that bracelet—wasn't there?
A. Yes, sir.
Q. Can you describe those?
A. That one bracelet?
Q. Yes; give us a description of it.
A. Well, it was a plain band bracelet; I think it had
219 something like a little leaf turned up, and in the center there was a diamond.
Q. Serpent's head, wasn't there?
A. No, sir.
Q. That is the best description you can give of that diamond, is it?
A. Of the diamond bracelet it is.
Q. Do you know anything of the value of that diamond bracelet?
A. No; I don't know anything about it.
Q. Well, that is all you missed on Monday—was that diamond bracelet—from the stock of goods as you saw them on Saturday?
A. That is all I can say I am positive of.
Q. You took a good view of it?
A. I don't know as I took a particularly good view of it.
Q. You cannot describe that diamond bracelet any better?
A. I think I have given a good description of it, haven't I?
Q. Then you went up again with the party on Monday?
A. Yes, sir.
Q. Well, what time did this party arrive there?
A. I think about 4 o'clock.
Q. You went up with the deputy marshal?
A. Yes, sir.
Q. As his aid?
A. No; I don't think it was as his aid; I did aid him, though.
220 Q. When you got to the store at about 4 o'clock, or 4 o'clock and 10 minutes, you found the store locked up?
A. Yes, sir.
Q. You found the curtains down?
A. There were no curtains on the windows.

Q. No papers or anything?
A. Yes; there was papers pasted on.
Q. You found the door fastened?
A. Yes, sir.
Q. And you got in?
A. Yes, sir.
Q. Well, now, you assisted there, aiding the marshal, wasn't you, in taking the stock you speak of?
A. Also the deputy sheriff. I assisted most everybody.
Q. You was a useful man there?
A. Yes; I think I was.
Q. You staid until you took this inventory?
A. Yes; I staid later.
Q. Now, will you state to the court and jury how many watches, all told, there were in those show-cases or in that shop?
A. I can tell you. (Looks at memorandum.)
Q. Of every kind and description.
A. I will give you the gross number of watches in a moment. Well, there was about eighty watches there. There may have been 79 or 76, or there might have been 81.
Q. There was no halves, was there?
221 A. Yes; there were some halves; some watches there without works.
Q. Now, the deputy sheriff laid out all the watches?
A. Yes, sir.
Q. Will you swear to that?
A. Yes, sir.
Q. And that is as true as anything you have stated?
A. Yes, sir.
Q. Now, don't you know, as a matter of fact, that he only laid out 57 watches, and among them there were no gold watches?
A. I know that isn't a matter of fact.
Q. You know that isn't a fact?
A. I know it is not. I have got the inventory here that I made for him at the time.
Q. Will you just look at that return (showing witness sheriff's return)?
A. Yes, sir; I see his return.
Q. Does that say anything about eighty watches?
A. I don't know that that says so. I am saying from this.
Q. Then, if the sheriff's return is correct, you are incorrect; is that so?
A. You can take whichever you prefer.
Q. I say, if the sheriff's return is correct, then you are incorrect; isn't that so; either one statement or the other is incorrect, isn't it?
A. So far as I am concerned, mine is correct.
Q. No, I am not saying whether yours is correct or not; I say one statement or the other is incorrect?
222 A. I won't say that; I will say that mine is correct, though.
Q. And that he took eighty watches?
A. In that neighborhood; close on to that; there may have been

some cases without the movements, but to all appearances watches.

Q. You was standing behind and keeping a memorandum?

A. Yes.

Q. Who was calling off?

A. I think Van Norman was a part of the time; a part of the time his clerk.

Q. Who else?

A. I think Mr. Moreland did some calling.

Q. Who else?

A. I guess that is all.

Q. Didn't you have Moore back in there handling these goods?

A. Moore?

Q. Yes, sir.

A. Who is he? Oh, more people?

Q. Yes. Did you have anybody else handling these goods?

A. I don't remember anybody else.

Q. Moreland was handling the goods?

A. Yes.

Q. You were handling the goods?

A. No, I wasn't at that time.

Q. Who else?

223 A. I said that Mr. Bryant, I believe they called him (he was the clerk), Mr. Van Norman, and Mr. Moreland.

Q. Now, was Mr. Van Norman in there at all when you commenced taking your inventory?

A. I don't know whether he was in there when we commenced or came in shortly after. He was in there while the inventory was being taken, however.

Q. Did he come there before half past 7?

A. My impression is that he did; I won't say positively as to that.

Q. Didn't he come in after Mr. Bennett went in there?

A. I don't think he did.

Q. Well, what is your recollection about it?

A. My recollection is not one way or the other.

Q. You don't know, then, when he did come in?

A. No, I do not; not positively.

Q. Who was there aiding you when Mr. Bennett came in and made this demand?

A. I don't know. No one was aiding me but Mr. Brackett, Mr. Moreland, and Mr. Hopping.

Q. Then Brackett was helping you?

A. Yes.

Q. Was Hopping back handling goods too?

A. It seems to me he was.

Q. Now, you say you think this was a correct inventory?

A. Yes, sir.

Q. Will you swear that it was correct and that you took down every item of every article in that store?

A. I will say this: I took down every article that was called.

224 Q. Will you swear that you entered in that inventory every article, good, bad, and indifferent, that was in that shop on the 31st day of December last?

A. I will not.

Q. I thought not.

A. The workmen's tools were not included in there for one thing.

Q. I am not asking you about the workmen's tools. Let us see what there was included in the workshop. Now, what did you get in there?

A. I don't know whether we got anything in there but a bracelet.

Q. O, you got a bracelet in there, did you?

A. Yes; I think that was all.

Q. Was that a bracelet that had been cut in two for making it smaller?

A. I think so.

Q. You think you got that?

A. I think so; yes, sir.

Q. You have no doubt about that?

A. No; no doubt at all.

Q. Now, do you remember of getting a diamond in there?

A. No, sir.

Q. You don't remember anything about it?

A. No, sir. There were no diamonds in that room, so far as I knew or ever did know.

Q. Did you pick up the things in that room?

A. I don't know that I did particularly.

225 Q. Then what makes you swear that there was none there if you didn't pick it up?

A. None, so far as I know.

Q. Well, did you examine with reference to loose diamonds around there?

A. I did not.

Q. Did you take up this bracelet?

A. I think I did.

Q. What else did you take up in that back room?

A. I think we went through this trunks.

Q. You went through his trunks?

A. I think so; I think the marshal and myself.

Q. You helped the marshal go through the trunks?

A. Yes; we went through the trunks.

Q. Did you find an overcoat there?

A. No, sir.

Q. You didn't find any overcoat?

A. No, sir; we were looking for stolen property.

Q. You took a lap-robe?

A. I don't remember taking a lap-robe.

Q. You made this inventory?

A. Well, I cannot give you every specific article in that inventory, surely.

Q. Did you find a fur robe in there?

A. I don't remember finding one in there. I saw one scheduled in the inventory.

Q. Do you remember the first item that you entered on your inventory?
A. The first item on the inventory was some jewelry.
Q. You are sure of that?
226 A. Yes, sir.
Q. And that is as correct as any statement you have made?
A. Yes, sir; all my statements are correct, so far as I know.
Q. Did you find any dictionary in the back room?
A. Yes, sir; I think so.
Q. You got that, didn't you?
A. Yes, sir.
Q. Did you find some roller skates?
A. No; I didn't find any.
Q. Did you find any gum?
A. No gum.
Q. Did you enter any such thing on your inventory?
A. No, sir; not that I know of; if I had the inventory here I could swear to its correctness.
Q. You put that bracelet that you picked up in there on the inventory?
A. My impression is that I did.
Q. Well, do you swear—now, will you swear to it?
A. Well, to the best of my belief, I will.
Q. You got it, didn't you, you and Hopping?
A. I think we did; yes, sir.
Q. Well, now, let's see about it; did you see any fine gold watches around there that night?
A. I saw one; yes, sir.
Q. Who had that?
A. I think Major Brackett had it.
Q. Did you see more than one?
227 A. No, sir; I did not; none that I was told were particularly valuable.
Q. Well, I don't care what you was told; I want to know what your own little eyes saw; I want to know how many you saw.
A. I said I saw one watch that was said to be very valuable.
Q. I ask what watches you saw—gold watches?
A. All the gold watches that were in there.
Q. Well, were there any gold watches taken from the safe?
A. One was taken from the safe.
Q. Did you see a chronometer watch there?
A. You've got me.
Q. Did you see any watch there labeled as of the value of $350?
A. I did not.
Q. Did you see any watch there labeled as of the value of $275?
A. I did.
Q. Did you see another watch labeled as of the value of $165?
A. I did not.
Q. Who went first to the drawers of the safe?
A. I think it was Mr. Moreland, Mr. Brackett; I don't know whether Mr. Hopping or not; I followed myself.

Q. Who first opened the safe?

A. The safe was open.

Q. Well, who first drew out the drawers?

228 A. I think it was Major Brackett; I won't say positively.

Q. Were you with him?

A. I was close by him.

Q. Do you know what was taken out first?

A. Only what they showed out—what they produced; they produced a gold watch; said they took it out of the safe.

Q. They merely told you that—you didn't see it?

A. I did; I saw it.

Q. And there was some of the drawers that were not opened at all?

A. Yes, sir.

Q. How many?

A. Well, I guess, two or three; I don't know the exact number; anyway I think there were two or three—probably more.

Q. Do you know what became of those gold watches?

A. Which one?

Q. The one that was taken out of the safe?

A. I think that is in the charge of the marshal now.

Q. Did you put that on your inventory?

A. I don't think that was; I may be mistaken about it.

Q. You don't think that was inventoried?

A. No, sir; I don't think so.

Q. Well, what else was there that you didn't inventory?

A. I didn't inventory the bed or some cigars that were there.

229 Q. You spoke about the tools that were there, but I mean the stock.

A. I guess we inventoried the most of the stock—all of it.

Q. How about the fixtures?

A. I think I put the fixtures in myself; I think I added fixtures without their being called off by anybody.

Q. When you commenced that inventory you commenced taking down values, didn't you?

A. Yes, sir.

Q. How long did you continue that mode of doing business?

A. Continued it down far enough until they called them off so rapidly that I couldn't multiply the different prices in; I abandoned it until we got down to the silver-ware, and then we followed it through, I think. It is all from recollection I am speaking.

Q. You merely used the pen or pencil, and they called to you?

A. Yes, sir; I used the pen.

Q. Who was calling besides Moreland?

A. Well, I think Mr. Hopping and Mr. Brackett were calling; I am not positive; they assisted, I think.

Q. Now, when Mr. Bennett came in there he announced that he was the assignee, did he?

A. No; I don't remember of any announcement.

Q. Well, did you see the bond; was it presented to you and Hopping? Did you see the bond?

A. Yes, sir.

Q. Its approval?

230 A. I saw the bond.

Q. And he told you and he told Hopping that he was the assignee, didn't he?

A. I asked him what he had to show he was the assignee, and he produced this bond.

Q. And you read it?

A. I think I did.

Q. And you read it the second time, didn't you?

A. I don't remember reading it the second time; I read it once anyway.

Q. And Hopping read it, did he?

A. I won't say as to that.

Q. Well, when was it that Hopping escorted the assignee out of the store?

A. I don't know; I think it was about 10 or 11 o'clock—10 o'clock.

Q. Eh?

A. I think it was between 9 and half past 10; somewhere along there.

Q. He told him he had no farther use for him, did he?

A. He told him he was the marshal and that he must get out.

Q. Did he take hold and help him out?

A. Yes, partially.

Q. He took hold and helped him out of the door?

A. Not roughly.

Q. And then he discharged you, his aids, did he?

A. Yes; he said we could go home.

Q. And he staid in the sole possession of the property?

A. Yes, sir.

231 Q. As the deputy marshal?

A. Yes, sir.

Redirect examination:

Q. Ernest, was there any question about that inventory being complete and full as far as it could be made?

Objected to as immaterial.

Q. Was that an honest and complete inventory?

A. To the best of my belief that was an inventory of all the stock that was in there.

Q. How long have you been with us, Ernest?

A. Upwards of six or seven or eight years; somewhere along there.

Q. Ever since you were a boy?

A. Yes, sir; ever since I was about eleven years old.

Q. You have been in our office continuously and are now pursuing your studies there?

A. Yes, sir.

Recross-examination:

Q. Did I understand you correctly that that did not contain all the articles, or did? I ask you if that contained all that was in that store, except the tools and the bed and bedding; now, I don't want any misapprehension about it.

A. Well, it also did not include the work benches or anything in the back room, except that one bracelet. I don't know but what we may have taken something out of the second room; it seems to me they were partitioned off, but in the front part of the store
232 everything that was of any value was inventoried, with the exception of that watch, and I am not positive about that.

Redirect examination:

Q. The safe—was that inventoried?

A. I do not think it was.

Q. Now, about that bracelet that was taken there; that bracelet was in there for repair, wasn't it?

A. It was; yes; I think it was soldered together.

Q. Wasn't that afterwards surrendered to the owners?

A. I won't say positively as to that. I know there was somebody came to the office, and we gave them an order to get that bracelet or to get some article. I won't say it was the bracelet.

GUS. J. HOPPING, sworn and examined on behalf of the defendant, testified:

Direct examination by Mr. O'BRIEN:

Q. Mr. Hopping, where do you live?

A. I live in St. Paul.

Q. How long have you lived in this city?

A. Since 1874.

Q. What is your business?

A. My business is real estate and insurance.

Q. Were you deputy marshal of the United States for this district last December?

A. I was.

233 Q. Were you the deputy marshal who has been spoken of here as levying this writ of attachment in Minneapolis on the 31st of December?

A. I am.

Q. You have heard the testimony here as to who accompanied you when you went there?

A. It was this Mr. Moreland and Mr. Ringwald.

Q. You have heard the statements that have been made here about the facts as to what took place and about the inventory of the goods?

A. Yes, sir.

Q. Now, did you make or cause to be made at that time an inventory of everything that was taken by you there?

A. Yes, sir.

Q. Is that it?
A. That is the inventory.
Q. Is that a true and complete inventory of everything seized by you under that writ of attachment at that time?
A. It is a true and complete inventory of everything I seized at that time. There was some articles in there that were stolen from me afterwards, but they are in the inventory.
Q. They are still in the inventory?
A. Yes, sir.
Q. Now, did you, directly or indirectly, or anybody else with you or for you, take anything but what is stated in that inventory?
A. No, sir.
Q. Where are those goods now?
234 A. They are in the possession of the United States marshal; partly in Minneapolis and the bulk of it in the office here.
Q. This inventory was made at the time, was it, and checked on the goods?
A. Yes, sir.
Q. You know it to be true and correct?
A. Yes, sir.
Q. Excepting where articles stated here have been taken away?
A. Yes, sir.

Counsel for defendant offers inventory in evidence.

Mr. MERRICK: Did you make that inventory?
A. Yes, sir.
Q. Yourself?
A. Yes, sir.

Reoffered in evidence.

Objected to as incompetent, no foundation laid for it, and immaterial, and as contradicting the other witness, who testified that he made it.

Mr. MERRICK: I would like to ask him if he made it at the time?
WITNESS: I made this from the other one; I copied this from the other one—from my own original.

Q. You didn't make the one in the store that night?
A. I made a part of it.
Q. Did you make it?
A. I made a part of —.

Objected to as incompetent and immaterial.

Mr. O'BRIEN: I offer this inventory in evidence under
235 the evidence of the witness.

Objected to as incompetent, irrelevant, immaterial, and no foundation laid.
Objection sustained, and exception by defendant.

Q. Now, take that paper and read off what you seized in that store and took away.

Objected to on the same ground.

The COURT: It doesn't appear but what he can testify without the aid of a memorandum.

Mr. O'BRIEN: Can you give every article that was carried away from that store without refreshing your memory from that memorandum?

A. I cannot.

Q. Now go on and give this memorandum without stating the value.

Objected to for that purpose because it is not a memorandum made by him at that time.

Q. When did you make that?

A. I made this a day or two after the levy was made—from the original.

Q. From the original memorandum made at that time?

A. Yes, sir.

Q. Did you check it off afterwards on the goods themselves to see if it was correct?

A. I have looked the goods over and *and* checked off by the goods. I had the goods distributed in the United States judge's room in the custom-house and had it laid out and checked off afterwards again.

The COURT: I think that is sufficient foundation. I don't suppose you want him to read that all off, item by item, do you?

236 Mr. LEVI: There is a great discrepancy here.

The COURT: I don't think it material whether he made the original list or not if he checked this off from the goods themselves and knows it is correct; that that is sufficient.

Mr. LEVI: Well, he checked off these goods some days afterwards.

The COURT: Of course, it should appear that they are the same goods. Perhaps that doesn't appear sufficiently. Let Mr. O'Brien ask some further questions.

Q. This list contains a list of all the goods and were the same goods you seized in Minneapolis under the levy?

A. Yes, sir.

Q. And contained a list of everything?

A. Yes, sir.

Cross-examination:

Q. How do you know they are the same goods?

A. Well, I know the goods.

Q. Any mark on them?

A. No, sir; not exactly.

Q. Did you have any mark on them?

A. I had them locked up in a trunk and had the key in my pocket; that is the reason I know the goods were the same.

Q. You had all the goods locked up in a trunk?

A. The valuable goods—yes; small goods, such as chains, watches,

and the most valuable goods; had the key in my pocket until I opened them again.

Q. You didn't keep the memoranda?

237 A: I did keep the memorandum, the original memorandum.

Q. You took down the articles?

A. I didn't take down all the articles, but I kept the original memorandum.

Q. You didn't take down any memorandum yourself?

A. I did, partly; yes, sir.

Q. Didn't Mr. Ringwald take down the articles?

A. Most of it; not all of it.

Q. Isn't it a matter of fact that you was out about the room when he was doing it?

A. Well, partly. This wasn't done all in five minutes; it took us several hours before we could do it all.

Q. Well, Ringwald took down these articles?

A. Most all of them—not all of them. I took down some of them myself.

Q. When did you copy that?

A. A couple of days afterwards.

Q. When did you compare it?

A. On about a week or two afterwards.

Q. Did you go to Minneapolis to compare it?

A. I got the goods here then to compare it.

Q. Did you have all the goods here then?

A. Except shelving and such things—counters and such things.

Q. Didn't you have articles up there in Backner Bros.' store at that time?

A. No, sir; not at that time. I had them there, but I had them here by that time—in the marshal's safe by that time.

238 Q. You had all the clocks up there at that time?

A. Yes, sir; we had all the clocks there.

Q. You didn't go there to compare it, did you?

A. We had them all here.

Q. Weren't all the clocks at that time in the store or store-room of a man named Pauley?

A. Yes; partly. I moved them—we moved them from there here when I heard that you or somebody else was going to replevin them.

Q. When did you make the comparison?

A. A couple of weeks or so afterwards. I couldn't say exactly when.

Q. The clocks were all up there then?

A. The clocks were all up here then when I compared them.

Q. Did you, when you copied this, compare it with the original?

A. I did, and checked it off with the goods—with the goods what was all spread out; every article; spread out in the room there, and compared it and checked it off.

Objection renewed. Objection overruled and exception by plaintiff.

The COURT: The only question is whether he should sit there and read them or whether the paper will go in. It amounts to the same thing, I suppose.

Q. Go on and read them off.

A. "Cash, $6.75; one robe, $5; six diamond rings, one gold
239 watch, fifty gold rings, seventy ditto, 128 charms and lockets, nine plated chains, fourteen plated chains, sixty filled and solid rings, twenty-two plated——"

Plaintiff's counsel, in order to save time occupied by reading each item, consented that the copy should go in evidence, not waiving, however, the objections passed upon by the court.

Inventory marked Exhibit "I."

Q. Now, did you take the safe?
A. I did not.
Q. When you moved out of that store building and took those things away you didn't take the safe with you?
A. No, sir.

Mr. LEVI: We object to that and move to strike out that statement.

Q. Did you ever take possession of the safe?
A. I did not.

Objected to and moved to strike it out. The party went in there and took possession of the store, and he is responsible for everything that he took possession of.

The COURT: I will not strike it out at present.

Exception by plaintiff.

Q. You say you never did take the safe?
A. No, sir.

Objected to as incompetent, irrelevant, and immaterial. Objection overruled and exception by plaintiff.

240 Q. What else was there that is contained in this list here that was taken away from you?
A. There was a regulator clock—another clock.

Objected to on the same ground as incompetent, irrelevant, and immaterial.

Q. What was taken away?
A. It was a regulator clock and another clock, a carpet, gas fixtures, a silver dish, and some fancy boxes for bracelets and such things.

Mr. MERRICK: We don't make any claim to recover for what we got back, and the assignee has testified he got that.

Q. When was this taken from you?
A. They were taken away from me the last day I moved the stock

away; it was either Friday or Saturday, I couldn't tell, after the first of January.

Q. In your absence?

A. In my absence. I couldn't lock the door any more on account of the man that owned the safe had the safe taken out, and he had the fillings of the door taken out; the safe wouldn't go out the door unless he took the fillings out.

The COURT: That is not material.

Q. Now, state whether or not there were any diamonds—loose diamonds—in that stock when you took possession, and whether you ever got any of them.

A. I never seen one.

241 Q. Was there any diamond rings there excepting those mentioned on this list?

A. No, sir.

Q. Were there any articles of jewelry in the stock, of any description, of value, which you got, except those stated in this list?

A. No; with the exception of one pair of bracelets what was given back to the party that claimed it—pair of bracelets that was taken out of the work-room.

Q. Those were surrendered afterwards to the party who claimed them?

A. Yes, sir; I guess on your order.

Q. Now, all the rest of the stuff that you took is over here?

A. Yes, sir.

Q. That you carried away? Was there anybody there with you or assisting you excepting Major Brackett, Mr. Ringwald, and Mr. Moreland?

A. No, sir.

Q. Those were the only persons?

A. Yes, sir.

Q. How late did you remain in that store that night?

A. I remained all night there.

Q. From that time forward until you moved the goods down were you in possession of that property?

A. Yes, sir.

Q. Who else was in the store during the time you were in there after 4 o'clock, beside your party?

A. There was Mr. Bryant or Ryant, or whatever his name is (the watchmaker), and young Van Norman.

242 Q. Emanuel Van Norman?

A. Emanuel Van Norman. He was in the workshop.

Q. Was he there all the time?

A. Well, he was there a part of the time; not all the time.

Q. Any other of the Van Normans around there?

A. Mr. Axel B. Van Norman came in there.

Q. Did Mr. Gustave Van Norman come around?

A. I wouldn't be positive; no; I guess he wasn't around that day.

Q. Mr. Bennett was in there that evening?

A. I think he was there next day; Mr. Bennett—yes.

Q. His two attorneys were there. Now after that, the next day, were any of these people around?

A. No; I guess not.

Q. Do you know anything about any drawers in the safe being locked?

A. Yes, sir.

Q. Were there any locked?

A. Yes, sir.

Q. Did you ask for the keys?

A. No; I guess Mr. Ringwald asked for the keys from Mr. Axel Van Norman.

Q. Did he give them up?

A. No, sir.

Q. Were those drawers ever unlocked by you or anybody for you?

A. No, sir.

243 Q. Gustave Van Norman states here that when the drawers were opened and the safe was opened there was three loose watches and a lot of diamonds; is that true?

A. No, sir.

Q. Is it false?

A. It is false.

Court here adjourned until to-morrow morning at 9.30 o'clock, Nov. 14, 1884.

Court having convened, pursuant to adjournment, on the morning of November 14, 1884, the trial of the cause proceeded as follows:

GUS. J. HOPPING, recalled on behalf of the defendants, testified:

Q. As I understood you yesterday, that property you seized under that writ of attachment was brought down here and is stored in the custom-house?

A. With the exception of some shelving.

Q. And except the articles which they took back?

A. Well, certainly.

Q. All the articles of jewelry, watches and pieces of jewelry of every description, are now contained over there in that building?

A. Yes, sir.

Q. And in charge of the marshal there?

A. Yes, sir.

244 Q. And that, with the exception of the shelving and what they took back, contains everything you and your party took there at that time?

A. Yes, sir.

Cross-examination by Mr. MERRICK:

Q. You say you got up to Minneapolis about ten minutes past 4 on the 31st of December?

A. Thirteen minutes past 4 we entered the store of Van Norman Bros.

Q. When you got there did you find the door locked?
A. Yes, sir.
Q. When you went into the store with your party there you found the goods undisturbed?
A. Everything was in place, as far as I could see.
Q. When did Mr. Axel Van Norman come in?
A. It might have been about 6 o'clock in the evening, I think; I didn't look at the time.
Q. Might it not have been about 8?
A. No, sir.
Q. Was he in there before the assignee came in?
A. He was.
Q. Well, you are as positive about that as you are about anything else?
A. I am positive about that.
Q. Did he come in alone or with some one?
A. Well, that I couldn't say, but I tell you why I am positive that he was in before Mr. Bennett. He gave us some prices on
245 the watches which the sheriff took; that is the reason I am positive that he was in before Mr. Bennett was.
Q. You was in their store thirteen minutes past 4?
A. Yes, sir.
Q. All the time?
A. All the time.
Q. And when the sheriff delivered up possession of the store and property to the assignee you still remained?
A. I don't know what you mean by that.
Q. When the assignee came in he presented his bond, didn't he?
A. Yes.
Q. You saw it, didn't you?
A. Yes.
Q. You examined it?
A. Yes, as much as I could; I couldn't read it all; I could read the print, but not the writing.
Q. Well, was it read in your presence?
A. Not read in my presence; no, sir.
Q. Did you examine it with any one?
A. I looked it through; yes.
Q. You was told what it was?
A. Yes.
Q. Mr. Bennett told you what it was?
A. Yes.
Q. He told you what he was there for?
A. Yes, sir.
Q. There was no mistaking that, was there?
A. Either Mr. Bennett or you told me, either one of you.
246 Q. Well, you knew that he was the assignee under the State law, didn't you?
A. I didn't know; no; I seen the bond there.
Q. You knew that he was there claiming the goods as an assignee, didn't you?

Objected to as immaterial. Objection sustained.

Q. What time was it that you escorted him out?

Objected to as immaterial.

Q. How long did Mr. Bennett remain there?

Objected to as immaterial. Objection sustained.

Q. What was there in there?

A. Jewelry.

Q. What else?

A. Watches, clocks, stoves, and counters, shelving, show-cases, carpet, gas fixtures, curtains, working bench, some working tools.

Q. Well, you locked the door, didn't you?

A. I did.

Q. You staid there all night?

A. I did.

Q. You had all there was in the store in your possession, didn't you?

A. I had all there was except the safe.

Q. Now, I will ask you what property you turned back to the assignee or the Van Normans of all there was in the store and in the work-room. Now, what property did you turn back to the Van Normans—either the Van Normans or Mr. Bennett, the assignee?

247 A. I allowed Mr. Van Norman to take out his trunk, his bedding, what he claimed was his personal property. The working tools—I allowed the workman to take away his tools and his work bench; that is all I turned back to them, and I allowed the safeman to take his safe, which I was told by Axel Van Norman that it was his property.

Q. I am asking you the question just now what property you turned back to the Van Normans or either of them or the assignee?

A. Oh, I didn't turn back anything; they claimed that as their personal property; I let them have it.

Q. Well, then, you turned it back to them, didn't you?

A. Well, I don't know; I didn't touch it; I laid on the mattress that was there.

Q. You what?

A. I laid on the mattress and covered myself with——

Q. You laid there all night?

A. Certainly.

Q. You had this property, all of it, in your possession?

A. Yes; it was there.

Q. You gave them permission to take their tools, didn't you?

A. Yes, sir.

Q. You gave the watchmaker permission to take his tools?

A. Yes, sir.

Q. And some little personal articles?

A. Yes.

Q. That is all you turned back, wasn't it?

A. Yes.

248 Mr. O'BRIEN: You didn't turn back anything.

Q. How long did you remain in possession of that store and that property?

A. About five or six days; I couldn't remember.

Q. You had it and kept it locked?

A. Yes; kept it locked.

Q. Under guard, didn't you?

A. Yes, sir.

Q. Will you tell us how many show-cases there were when you went in there?

A. There was three on the counter.

Q. Do you know how many were returned in your inventory?

A. Two; and if you want me to tell what became of the third one, I am willing to tell you.

Q. How many watches were there when you went in there?

A. I can tell you if I see the inventory. I didn't keep it in my mind since then.

Q. Well, you know how many were laid out for the sheriff.

A. Oh, about fifty or sixty.

Q. How many were there all told?

A. I tell you I can't tell you unless I see the inventory.

Q. Did you count up the watches?

A. I counted them and gave them to the person what took down the inventory at that time; but you don't want me to remember it since the 31st of December.

249 Q. But you have made statements since that time, haven't you, so your recollection is fresh?

A. No; my recollection isn't fresh.

Q. Haven't you stated that the sheriff took out about $1,400 worth of watches on the counter?

A. Between $1,300 and $1,400.

Q. Now, what I want to get at is, what proportion of the watches had been laid out there for the sheriff?

A. Most all the watches what was in the store except some cheap nickel watches. All the good watches were laid out for the sheriff; all the gold and siver watches that were there. They looked like gold to me, but I was told they were filled.

Q. Did you see any solid gold watches around there?

A. Yes; I saw one.

Q. Is that all the one you saw?

A. That is all the one I saw.

Q. Where did you see that?

A. In the safe.

Q. Did you have hold of that?

A. I had.

Q. Did you see more than one?

A. No, sir; I did not.

Q. Did you go to the safe?

A. I did.

Q. What did you see there?

A. I saw a safe and trays and papers and books and this gold watch and some empty trays (gold trays) and keys lying in the drawers.

Q. Did you examine the safe all the way through?

250 A. I did as well as I could, except those that were locked. I couldn't open all the drawers. I was scolded by the marshal afterwards that I didn't take the trays.

Q. You turned over this safe with the drawers still locked to somebody else?

A. Yes, sir.

Q. And you don't know what amount of diamonds—whether there were any diamonds in there or not?

A. Certainly I couldn't.

Q. You don't know whether it was filled with gold watches or not?

A. I couldn't tell whether those locked drawers were filled with gold watches or diamonds or anything else.

Q. Do you remember after you went in there who first of your party went into the work-room?

A. I do not. I guess I went in there when Mr. Emanuel Van Norman was in there.

Q. Did you go in there alone?

A. Well, I couldn't swear whether I went there alone or somebody else went with me.

Q. I mean, did you go in there by yourself?

A. If I went in there I went in my own person; of course nobody else carried me.

Q. When you first went into the store did you go into the back room?

A. I didn't pay no attention to that; I didn't look at the watch for that.

Q. Did you pick up the things in the back room?

A. I did not.

Q. Who did?

251 A. I don't know who did. I don't know if any one disturbed it there. I know that much, that Mr. Ringwald brought me a pair of bracelets.

Q. Do you know where he got them from?

A. He said he found them in the work-room.

Q. Did you go into the work-room at any time?

A. Oh, yes, I went in there, especially when Van Norman took his goods out.

Q. No; I am talking about the first day.

A. This was the first day; I know what I am talking about.

Q. What did you get in there in the back room? Tell the jury what you got there.

A. One pair of bracelets at the back room; I didn't get it myself.

Q. What else did you get out of the back room?

A. Nothing.

Q. Sure?

A. I am sure of that.

Q. Did you hear anything about a lap-robe—see a lap-robe?
A. That was in the middle room, that wasn't in the back room.
Q. I am talking about the working room.
A. But the sleeping room isn't the working room. There were three rooms—there was the store-room and middle room where the bed stood and the work room was back there, and you never asked me about the middle room and always asked me about the back room?

Q. Where did the lap-robe hang?
252 A. Right in the middle room. It laid on the bed, if I remember right.
Q. You took that?
A. I took that.
Q. What else did you take there?
A. Not that I remember I took anything out of the middle room.
Q. Did you get a dictionary there?
A. No, sir.
Q. Did any of the party take a dictionary there while *while* you was there?
A. Do you mean that dictionary in a leather cover?
Q. Yes, sir.
A. No, sir; it wasn't taken out of the middle room; it stood right——
Q. Well, did you take one?
A. No, sir. I took a dictionary out of the store and gave it back to the party that it belonged to—that claimed it, but that was right in the store—right near the regulator on the floor.
Q. Did you take a gun in there?
A. We had a gun there, but——
Q. Well, did you get one?
A. I didn't.
Q. You had a gun?
A. I had a gun.
Q. What did you do with it?
A. I guess I gave it to the Van Normans or whoever claimed it. I don't know who claimed it.

Q. Did you get roller skates?
253 A. I had roller skates; I gave them to Botner Bros. on Mr. Van Norman's request.
Q. You say you took part of this inventory?
A. Yes, sir.
Q. What part did you take, if any?
A. I couldn't tell you exactly how many things I put down.
Q. Well, now, isn't it a fact that you didn't have anything to do with it?
A. It is a fact that I did have something to do with it.
Q. Isn't it a fact that Mr. Ringwald stood back of the counter taking down these items, and that you was out in the main part of the store traveling around, and that Mr. Moreland was calling off these goods?
A. It is not the fact.

Q. Did you call off any goods?
A. I did.
Q. What?
A. Oh, rings or something that we counted. I counted them off, just the numbers we had there—watch-chains and such things. You see, there was hundreds of rings and chains and such things. They all had to be counted.
Q. And this you swear is an accurate statement?
A. I swear to what I made there in my own handwriting.
Q. Will you swear that you made an accurate inventory of every article of every kind and description of property that there was in that store when you pretended to take possession?
A. To my best knowledge and belief, we did.
254 Q. Now, you have two show-cases and you swear there were three?
A. Yes, sir.
Q. Well, what else didn't you include here; what else was there that you have omitted?
A. Nothing that I have known of.
Q. Have you got the trays that you have spoken of here; are they on that list?
A. No, sir; they belonged to the safe; it was a jewelry safe and they belonged there.
Q. Have you got the stove and pipe on here?
A. I think the stove is on there; yes.
Q. Have you got the signs on here?
A. I didn't take any sign except one gold-pen sign, and I guess that is on there.
Q. This property was all in good condition?
A. As much as I know about jewelry.
Q. Well, you know some things, don't you; it was in good condition?
A. Well, I think it was.
Q. You haven't any doubt about that?
A. I don't think I have; no.
Q. Some of it you brought where?
A. Well, when; right after the levey, or when? That goods has been removed several times.
Q. Been removed?
A. Yes.
Q. Been carried around; you stored some of this ware in Minneapolis?
A. Yes; and some we couldn't store there I stored in the warehouse.
255 Q. Did you store some with Backner Bros.?
A. For a few days; yes.
Q. Where else did you have it distributed?
A. Nowhere that I know of.
A. Are you sure that it was all boxed?
A. Yes.
Q. Did you see to the boxing of every article?

A. Yes.

Q. Is that true?

A. That is true, except what you and your party stole from me; I didn't see that?

Q. What do you mean by that?

A. I mean that you and your party went in there in my absence and took some of the goods out of the store.

Q. Do you mean to say that I entered that store after you left it?

A. I was told so.

Q. Well, sir, don't testify to anything you don't know.

A. I was told so; and I know this, that you defended the case after I found track of it.

Q. Isn't it a fact that you went away and left your doors open and left this property there, and it was taken by the assignee, and that you instituted proceedings in that court up there, and that the court held you wasn't entitled to it?

A. The court held that you was entitled to the goods I took on the search warrant.

Q. Yes; held that the assignee was entitled to the goods and ordered them turned over to him?

A. No, sir; the court didn't hold such a thing.

256 Q. And isn't it true that you went into the municipal court and swore there that you were the owners of that property?

A. I swore that the marshal was the owner and I was responsible for it.

The COURT: Let us not take any time on that; it is not material now.

Q. You stored some at Backner Bros. and some at Pauley's?

A. Only left with Backner Bros. for safe keeping in their safe. Pauley's warehouse and Backner Bros. was the only places.

Q. Didn't they lay on the floor in the custom-house for weeks?

A. Two show-cases were laying on the floor for some weeks.

Q. Now, I will ask you if, as a matter of fact, this property, since it came into your hands and the hands of the marshal, hasn't been examined and pulled over by at least a dozen different parties?

A. It is not true.

Q. It is not true?

A. It is not true.

Q. How many parties have examined it?

Objected to as immaterial.

Q. Now, you say you saw one gold watch—elegant gold watch, was it?

A. Well, I was told it was a good one; it looked very plain.

257 Q. Did you take it out of the safe?

A. Either myself or Mr. Moreland; I wouldn't say positively; we both went to the safe together to see what was in the safe.

Q. And you got that fine watch?

A. I say it was either him or me; I don't know; I haven't got it.

Q. Your memory is good, isn't it?

A. Oh, yes.

Q. Which one was it took it?

A. I told you I wouldn't swear who it was.

Q. Who took the watch out from the safe first?

A. Well, I answered that three or four times. I couldn't swear to it.

Q. Now, as a matter of fact, were there not three watches there, and one of them was labeled $275, one $350, and one $165?

A. Mr. Merrick, I told you once before that there was no three watches in the safe; that there was only one gold watch in the safe without the lable, without anything; it was in a little bag.

Q. Do you remember this state of facts, of Mr. Moreland having one valuable watch in his hand and yourself another and yourself taking one and saying, I think I will put this in my pocket until sold on execution?

A. That is not true. If such a remark was made it must have been made by you or somebody else. I never made such a remark and never heard Mr. Moreland make such a remark.

258 Q. Neither of you took it and put it in your pocket, saying you would hold it until after execution?

A. No, sir.

Q. Never made any such remark?

A. No, sir.

Q. How long have you been deputy marshal?

A. I have been deputy marshal from last year about May.

Q. You were formerly employed by Harwood & Co.?

A. Yes, sir.

Q. You have no idea yourself of the value of the goods?

A. No, sir; I have no idea.

Q. The fixtures were all fine fixtures?

A. Yes, sir.

Q. Fine condition?

A. Yes, sir.

Q. As good as new?

A. Yes, sir.

Q. These were fine show-cases?

A. Yes, sir.

Q. And the counters were cherry, and elegant?

A. I have been told that each of the show-cases was worth about a hundred dollars.

Q. And the stove?

A. Was a good stove; I don't know whether it was new; it was a good stove, self-feeder. Everything looked neat and fine there.

259 Major J. B. BRACKETT, sworn for the defendants, testified:

Direct examination by Mr. O'BRIEN:

Q. You were one of the deputy marshals for this district last December, were you not?

A. Yes, sir.

Q. You were present on the occasion of this Van Norman seizure?

A. I was.

Q. Were you present at the making of the inventory?

A. Yes, sir; a portion of it.

Q. How long did you stay there that day?

A. I was there, I think, about three hours.

Q. Was the inventory completed when you left?

A. Yes, sir; the memorandums were taken of everything there.

Q. Were those memorandums complete memorandums of all the articles seized by you there?

A. I think so; yes, sir.

Q. Were those articles afterwards brought down to St. Paul?

A. A portion of them.

Q. With the exception of the heavy goods, the shelving?

A. Yes, sir; all the jewelry and small matters were brought down; I brought that down myself.

Q. They have been in possession of the marshal ever since?

260 A. Yes, sir.

Q. Now, those goods that you brought down, are they the same goods levied upon up there?

A. The same goods.

Q. And do they include every article of jewelry and matters of that kind that were levied on up there?

A. Yes, sir.

Cross-examination by Mr. MERRICK:

Q. What time did you go up there?

A. I left here at 5; I got there about twenty minutes before 6, I think.

Q. But the party had been in the store ahead of you?

A. They had; yes.

Q. You got up there about six?

A. A little before six.

Q. Who was inventorying when you went in there?

A. There were Mr. Moreland, Mr. Ringwald, and Mr. Hopping and a gentleman that called himself the deputy sheriff—I don't know whether he was or not; I never saw him before—and one or two others, I think.

Q. Mr Ringwald was keeping the account and Mr. Moreland was——

A. Yes; both of them.

Q. Moreland was giving the articles and prices, wasn't he?

A. Yes, sir; Mr. Moreland was assisting to.

Q. They commenced with this inventory by fixing values, didn't they?

261 A. I believe they——

Q. They fixed values all along, didn't they?

A. Well, I think some of them ——

Q. Have you any doubt about that?

A. No; I think Mr. Moreland told them.

Q. You don't see them there now, do you (showing paper)? They commenced by fixing values, and those values were fixed by Mr. Moreland, weren't they?

A. Well, that I cannot tell, all the time.

Q. Mr. Hopping didn't fix any values?

A. Not that I know of.

Q. You didn't fix any values?

A. No, sir.

Q. Well, who did fix them?

A. Well, I don't know.

Q. So Mr Hopping didn't take any particular part in this inventory, did he?

A. He did, sir.

Q. In fixing the values?

A. He took the whole charge of it, Mr. Hopping did.

Q. Did you look around to see what kind of a stock there was, when you went in there?

A. I did.

Q. Did you count up the watches?

A. I didn't count them.

Q. Did you count up the solid gold rings?

A. I did not.

Q. Did you count up the solid gold watches?

A. I counted up nothing.

Q. Did you see how many diamonds there were?

262 A. I did not.

Q. Did you see how many opera glasses there were?

A. I did not.

Q. Did you see whether there was any diamonds in the work-room or not?

A. No, sir.

Q. Did you see what was in the safe?

A. No, sir.

Q. Well, you and Mr. Hopping—you are deputy marshal?

A. I am.

Q. He took everything and locked the store up, didn't he?

A. Yes, sir.

Q. He staid there all night?

A. Yes, sir.

T. B. MYERS, sworn and examined on behalf of the defendants, testified:

Direct examination by Mr. O'BRIEN:

Q. You reside in this city?
A. I do, sir.
Q. Have lived here how long?
A. Since 1872.
Q. What is your business?
A. Watches and jewelry.
Q. Wholesale and retail?
A. Yes, sir.
Q. Carried on that business for how long?
263 A. Since 1872, here; previously, in the East.
Q. Are you a member of the firm of Myers & Finch?
A. Yes, sir.
Q. Mr. Myers, do you remember my calling upon you some time after last December to ask you to go up to the marshal's office and inventory the valuation of the stock of jewelry that had been seized at Minneapolis?
A. Yes, sir.
Q. Do you remember about when that was?
A. Well, I can't give you the date; I don't know whether any date is shown upon the inventory or not.
Q. Well, it was this Van Norman stock, wasn't it?
A. Yes; said to be.
Q. Well, did you go and make an inventory and examination of those goods?
A. I did, sir.
Q. Occupying how much time?
A. Well, I think it was the greater part of two days.
Q. I will call your attention to that paper and ask you if that is an inventory made by yourself of those goods as they were in the marshal's hands?
A. That is an inventory made by Mr. Carpenter, our salesman, and myself.
Q. That inventory was made by Mr. Carpenter in your presence?
A. Well, it was made by Mr. Carpenter and myself. Some of this is in my handwriting and some in Mr. Carpenter's handwriting, and we took the inventory together and compared in regard to
264 the prices, and established prices upon our mutual judgment.
Q. Now, then, those goods were over at the custom-house, were they?
A. They were; yes, sir.
Q. Is that a true and complete inventory of all the goods you found over there?
A. It is a true and complete inventory of all the goods that were in that room.
Q. And the prices that you have fixed there, are they the fair prices of those goods as you found them there at that time?

A. They are; yes, sir.

Q. Now, will you state what the aggregate value of that stock was, in your judgment?

A. Well, the stock in that condition, it is a matter——

Mr. MERRICK: Well, I object. It seems to me it is the condition it was in on the 31st, when they took it, in that store. Now, we object to his testifying unless he can say what their condition was when in the store.

The COURT: When did you say this was?

WITNESS: I think the inventory will show the date; there is no date here. I think Mr. O'Brien can probably give the date; he knows the time it was taken.

Mr. O'BRIEN: It was along in the early part of January. I propose to show by this witness the value of those goods.

The COURT: Of course the question is what was the value
265 at the time it was taken and in the condition it was in, and I suppose if the witness testifies to a different time it ought to appear that there had been no depreciation in the prices of that sort of goods, and that its condition was the same.

WITNESS: I think I can give the exact date from our books that the inventory was taken.

The COURT: About when was that?

A. It was in the early part of January. I won't give dates from my memory, but I can give it exactly by referring to our books. It was in the early part of January, I think, some time that the inventory was taken.

Counsel for defendant offers to prove by this witness the value of that property.

The COURT: I think I will allow him to state.

Exception by plaintiff.

Q. What was the value of that stock as you found it?

Objected to as incompetent, irrelevant, and immaterial.
Exception by plaintiff.

A. The value of the stock as we found it is the inventory value. The value of the stock, in Mr. Carpenter's and my judgment, (I took Mr. Carpenter along with me—he was an expert), and the value of the stock is as was given in the inventory.

266 Q. How much is that?

Objected to.

Q. Can you state the value without refreshing your recollection by looking at the footings?

A. No, sir; I cannot.

Cross-examination by Mr. MERRICK:

Q. Did you make these footings yourself?

A. That I cannot say, sir. The footings were made under my supervision. I think the footings——

Q. Did you make those footings yourself here, or ascertain that they were correct by going over them, the additions, yourself?

A. I did not; no, sir; they were made by our book-keeper.

Q. Well, say so then; you did not. Did you carry out the figures and all this here yourself for the different articles?

A. Partially; not entirely.

Q. Did you look over those that you did not carry out yourself to see that they were correct?

A. I did not entirely; no, sir.

Redirect examination:

Q. By examining that paper which you say was the inven-
267 tory made at the time partly by yourself and partly under your supervision, looking at the footings, will you then be able to refresh your memory and state what judgment and conclusion you came to as to the value of that stock of goods?

A. Yes, sir.

Q. Please examine it and state it.

Objected to as incompetent and no foundation laid, and that the memorandum does not appear to be such that he could use it for that purpose, because he didn't know it was accurate at the time.

A. I haven't said the amounts were carried out by Mr. Carpenter, sir.

Mr. MERRICK: I understood you didn't examine them to see whether they were correct.

A. I made no statement that they were crrried out by Mr. Carpenter; I said the additions were made by our book-keeper, and in addition to that I will now say that they were all rechecked after.

The COURT: By whom?

A. By the book-keeper and myself.

Mr. O'BRIEN: You know them to be correct, don't you?

A. No, sir.

Mr. MERRICK: In what way were they rechecked?

A. They were called and refigured.

Q. By yourself?

A. Well, does the gentleman know anything about book-keeping, may I ask?

268 The COURT: Answer the question, Mr. Myers.

WITNESS: I stated that before; that they were done by the book-keeper and myself. If the gentleman has no knowledge of book-keeping I cannot explain to him.

Mr. LEVI: We are not trying to arrive at a system of book-keeping.

Mr. MERRICK: We are trying to arrive at what you did.

The COURT: I wish you would state exactly what was done in regard to that.

WITNESS: At the time the inventory was taken I gave this to the book-keeper to refigure the footings; Mr. Carpenter and I figured it, and I gave it to the book-keeper to figure them over again to see if

they were correct, and I have every reason to believe, as far as it is possible——

The COURT: No matter about that, but just what you did.

WITNESS: —that the footings are all correct.

The COURT: I say no matter about what you believe—tell what you did.

WITNESS: I have so stated, sir, that the—first, Mr. Carpenter and I figured these, and they were afterwards figured by the book-keeper and verified, and these figures as shown here are the same figures as shown then, I think; I will tell you as soon as I have examined them to see.

269 The COURT: I understood you to say, in answer to Mr. Merrick's question, that you didn't do the footing, but the book-keeper did.

A. Well, I didn't intend to be so understood—that is, as far as our own footings were concerned; Mr. Carpenter and I footed these first, and then they were afterward footed by the book-keeper.

The COURT: Well, that makes quite a material difference.

Mr. LEVI: Did you foot up that whole list?

A. Did I?

Q. Yes, sir; so as to ascertain yourself if the final footing was correct.

A. I did; yes, sir; at least Mr. Carpenter and myself footed these, and then they were afterward footed up by the book-keeper. In a matter like this, so important, we usually take every method and precaution to verify the correctness.

Mr. LEVI: The only thing we want to know is if you yourself went over these columns, figure by figure, from the beginning to the end and added them up yourself.

A. I did; yes, sir.

Q. Individually?

A. Yes, sir.

Q. Without reference to anything that Mr. Carpenter or the book-keeper had done?

A. Well, that was done; Mr. Carpenter and I both figured these at the time, and then I gave it to the book-keeper and she figured see if there were any errors.

270 Q. Then are we to understand you now that each of you, separately and apart from the other, went over all these figures?

A. Well, so far as I am concerned I can only say what I did. I figured them and Mr. Carpenter figured them. I am not prepared to swear that Mr. Carpenter figured every column. I presume he did. I took his statement for it.

Q. I don't care what Mr. Carpenter did.

A. That is what you asked me to swear.

Q. No.

A. Well, I can swear that I did it.

Q. You went over that inventory?

A. Yes, sir.

Q. Did you carry out the figures in each line there?

A. These are not my figures in the footings; no, sir; these are the book-keeper's figures.

Q. Are the figures in each line?

A. Well, I don't understand what you mean, sir.

Q. The values as carried out?

A. Part of these are Mr. Carpenter's and part of them are mine.

Mr. O'BRIEN: They represent the value you and he agreed upon as being the value of the items?

A. Yes, sir.

Mr. LEVI: Did you and Carpenter in each instance put down the value; did you look over to see that he was making no mistake in each case—each item?

A. Well, what is it you want me to swear to?

271 Q. I don't want you to swear to anything; I want to know who made this. You say Mr. Carpenter wrote down a great many of those items; whether or not, when he wrote them down, he looked over to see whether he was putting down the figures as you and he had agreed upon as the values?

Objected to as absurd.

Objection overruled and exception by defendant.

A. I don't understand the question.

The COURT: I understood you to say you put down some of those figures and Mr. Carpenter put down some of them; is that correct?

A. I called the prices on some and Mr. Carpenter wrote them. On some of them I wrote the prices myself.

Q. Now, those that Mr. Carpenter wrote, do you know if they were correct at the time; did you know what they were and if they were correct at the time?

A. Well, I have every reason to believe Mr. Carpenter is an honest man.

The COURT: That is not the question we are asking.

WITNESS: Well, in a business way, I should say yes, I do.

Mr. O'BRIEN: Did you afterwards, you and Mr. Carpenter, go over the list together, and were the values put out there, satisfactory to you, as being your judgment of the value?

A. Yes, sir.

272 The COURT: The footing is the footing that you arrived at at the time?

A. Yes, sir. I say the figures of the footings are the book-keeper's—that is, the figures made by the book-keeper are corresponding to the figures made by us.

The COURT: I think the foundation is sufficient.

Exception by plaintiff.

Mr. O'BRIEN: Go on, now, and state the value.

A. The amount as shown here is $3,521.78.

Q. That was the value?

A. Yes, sir.

Q. In your judgment, how much?

A. $3,521.78, if these figures are correct here. This is not our figures. I presume that is it, though; that is the amount.

Inventory offered in evidence by defendant's counsel.

Objected to as incompetent, irrelevant, and immaterial, and no foundation having been laid.

The COURT: I don't think it is competent.

Mr. O'BRIEN: In connection with the testimony of this witness, I offer now the inventory of the valuation of the property made at that time, consisting of the valuation of each item and containing in all many pages.

Objected to as no foundation laid, incompetent, irrelevant, and immaterial.

Objection sustained and exception by defendant.

273 Paper marked Exhibit "J."

Cross-examination:

Q. Have you given us the result of the footings of the different columns?

Objected to.

Q. How did you arrive at the result of $3,521.78?

A. By the additions of the several columns; that is the total footings of pages.

Q. And that is the result?

A. Less six per cent. discount; that is the total footings less six per cent. discount.

Q. Isn't it a fact that the total footings amount to $3,747.57?

A. It states on the paper.

Q. Well, whatever it is it is correct; that is the total footing of the columns, isn't it?

A. Yes, sir.

Q. Well, then, that is the amount of valuation fixed?

A. No, sir.

Q. As carried out here, I mean.

A. Not a valuation; no, sir. We inventoried the stock at what would be a fair price, and then took off the six per cent. for a cash valuation.

Q. When you fixed the valuation, for instance, you had one gold watch here and carried it out $50 in the column, for instance, or one dollar or ten dollars, didn't you?

A. Yes, sir.

274 Q. And each article or list lots of articles you carried out here you carried out in that way, and your total footings for valuation are $3,747.57?

A. Yes, sir.

Q. That included the stock of goods, didn't it; that didn't include the safe?

A. It did not; no, sir.

Q. That didn't include the fixtures?

A. I think there were no fixtures inventoried.

Q. Well, this is simply the stock of goods, jewelry ware?

A. It was the stock; yes.

Q. Now, in arriving at this result, could you give us an estimate of what was the original cost price of those articles?

A. No, sir; I couldn't.

Q. You have no idea?

A. Well, I couldn't now; I could at the time, but we took the inventory, not of the cost, but of their value at that time. There were many goods in that stock that were not worth one-fifth of what they originally cost; goods out of style, out of fashion. All their value was for old gold to melt up.

Q. But it had no reference to the cost price—this valuation of yours had no reference to the cost price of these articles?

A. The inventory was made upon their then present value.

Q. You were making this estimate of what they would bring at a forced sale, wasn't you?

275 A. Well, I don't understand what you mean by forced sale.

Q. At a sheriff's sale, when they were put on the market to be sold?

A. Well, it is impossible to make an estimate of that kind, sir; the estimate we made was the marketable value of the goods.

Q. You wasn't estimating them to be sold in the ordinary way of trade?

A. We estimated at the value of the goods, what they would be worth, what a dealer could use them at. A sheriff's sale is what a man chooses to give.

Q. I understand, but supposing you wanted to go to the market and take these goods at what they would bring at a forced sale and dispose of them at once?

A. We considered that the goods would be worth that value to be disposed of then.

Q. At a cash sale right then?

A. Yes.

Q. Yes; that is what I supposed; and had no reference to the cost price?

A. None whatever, except, of course, we considered cost in figuring that, and figured the depreciation.

Q. You knew nothing of the condition of these goods as they were in the store originally?

A. In Minneapolis?

Q. No, sir; you knew nothing of the condition they were in then; how did you find these goods here; did you find them all in one place?

A. All in one room.

276 Q. Boxed or otherwise?

A. Part of them boxed. They were all the smaller goods in parcels and in a box, and of course there were some larger goods that were loose around the room, on tables and on the floor.

Redirect examination:

Q. The rule that you adopted in valuing this stock, was it not precisely the same rule that you adopted in taking your own stock and valuing your own goods?

A. Yes, sir.

Q. There is one business rule for valuing stocks under any and all circumstances?

A. Invariably.

Q. And the same rule you apply to your own business in taking stock of your own goods?

A. Yes, sir

GUS. J. HOPPING, recalled on behalf of defendants, testified:

Q. Were you present at the time Mr. Myers made this inventory?

A. I was.

Q. Those goods he inventoried—were those the same goods you brought down?

A. They were.

Q. And were they all of them, except the fixtures and the matters that had not been taken?

277 A. They were.

Cross-examination:

Q. Did you bring these goods down yourself?

A. I sent them down.

Q. Did you bring them down yourself?

A. I did not; but I checked them off when they were here.

Q. You say you was with Mr Myers?

A. I was.

Q. When was it that he made this inventory?

A. It was the early part of January or middle of January; I couldn't tell you exactly the date.

Q. Was it about the 21st?

A. I guess it wasn't that late. No; it was made shortly after the goods was down here, and I was down here. Mr. O'Brien insisted on making an inventory.

Q. Well, you brought the goods down within a week?

A. Yes.

Q. A portion of them?

A. All of them; well, all except the shelving; all the small goods.

Q. No small goods up at Minneapolis now, anywhere?

A. No, sir.

Defendant rests.

Plaintiff rests.

This closed the testimony in the case, and after argument
278 by Mr. O'Brien, on behalf of the defendant, and Mr. Merrick, on behalf of the plaintiff, the court instructed the jury as follows:

The COURT:

GENTLEMEN OF THE JURY: This trial has taken considerable time, and there have been a great many questions discussed during the progress of it, but the questions have nearly all been settled, and there is but one left for your consideration in the case.

The plaintiff in this case is an assignee for the benefit of the creditors of Van Norman Bros., and as such assignee, under the laws of this State, he is entitled to the property of his assignors. At the time of the assignment the Van Normans were owners of a stock of goods and certain property in Minneapolis. The defendant took this property and has refused to deliver it to the assignee. The assignee is therefore entitled to recover the value of the property so taken.

Much has been said in this case, and something by counsel in summing it up, about the fraud of the Van Normans in making the assignment and about the character of the assignee and what would become of the funds, but that has nothing to do with the validity of the assignment. The assignee represents the creditors of the Van Normans and not the Van Normans themselves, so that the question of the good faith of the Van Normans in making the assignment is not here for our consideration at this time. In this case the plaintiff is entitled to a verdict upon the testimony that has been given, and the only question for you to determine is the value of the property taken by the defendant.

279 Now, upon this question, the plaintiff claims that the property was of the value of $10,000. The defendant denies this, and alleges the value at $3,500.

In determining this question perhaps the first point for you to consider is, what was the stock of the Van Norman Bros.; what was its quantity and condition at the time it was taken by the defendants, the question being what was its value at that time in the condition and place where it was. It is conceded that the defendant took the stock in the store at the time that he went there by himself or his agents, so that I say the question really is, What was the stock at that time and what was its value?

The testimony upon the part of the plaintiff tends to show that a day or two before the property was taken the stock in the store, in round numbers, was worth $10,000; and the witness for the defendant, Moreland, also gives it as his judgment that on the 29th of December there was that amount of stock in the store. The testimony all seems to concur as to that point. The plaintiff's witnesses—one, or perhaps more—testify that the stock remained substantially the same, in appearance at least, when the defendant went into possession. The defendant's witnesses, on the other hand—one or more of them—testify that the stock was not in the same condition, but that goods had apparently disappeared between the 29th and the 31st. The witness Myers testifies that the stock he examined in the custom-house in this city in the possession of the defendant was worth $3,521.78 at that time; that he made his examination some ten days or two weeks after the time of taking, as I understand it. These

280 figures perhaps some member of the jury had better take, so that they may be advised as to what they actually were when they retire to the jury-room. He says that the stock he examined was worth, in the condition it then was, $3,521.78. Now, the value of his testimony depends largely upon whether they were the same goods and all of the same that were taken; because, as I have said, the valuation is to be fixed as of the time of the taking, and with reference to the condition the property was in at that time and the quantity of goods taken at that time. The value given by the witness Myers includes only the stock in trade, as I understand it. It appears that the defendant took the fixtures in the store also, which the witness Lilligren testifies were worth $1,118.84. As I understand it, the stove was also taken, and one or more of the witnesses testifies that was worth fifty or sixty dollars, and a robe also taken which one of the witnesses testifies was worth $25. The defendant is liable for only what he got, and he is liable for the fair and reasonable value of what he did get at the time that he took it and in the condition in which it then was. "If the safe in question (which has been referred to in the testimony) was the property of the Van Normans at the time of making this assignment to the plaintiff and defendant took possession of it, then, notwithstanding that the Van Normans had not paid the purchase price of such safe, it became the property of the plaintiff, and the defendant is liable in this action for its value and its contents, although it may appear that he delivered such safe to the persons who sold it to the Van
281 Normans, if he did so without the consent of the plaintiff; and there is no evidence in this case to show that the plaintiff ever consented to such delivery."

As I have said, gentlemen, your verdict must be for the plaintiff and for the value of the property of the Van Normans of which possession was taken by the defendant.

It could not be for more than $10,000; it could not be for less than $3,521.87, and the value of the fixtures, stove, and robe in addition.

Plaintiff also is entitled to interest at the rate of seven per cent. upon the sum you shall find him entitled to, the general sum you find him entitled to recover, from the time of the commencement of this action, February 27, 1884. The form of your verdict would be that you find for the plaintiff and assess his damages at the sum you find him entitled to recover, naming it.

Mr. O'BRIEN: I desire to except to that portion of the charge which directs a verdict for the plaintiff, and which states that the assignment is a valid one and that its validity has been established, and desire to except to that portion of the charge which permits the recovery of any of the property not absolutely taken and converted by the defendant. The testimony upon the part of the defendant, if I recollect right, was that they did not take the safe; that that was taken by another person; and also to the fact that certain of this property, the regulator clock and certain other articles of property that were taken back by this plaintiff—the testimony——

282 The COURT: Of course (if there is any question about that) the plaintiff is not entitled to recover for the property which was taken by himself, including the regulator clock and carpets and some other articles which—you will remember what the testimony was in that regard. The plaintiff is not entitled to recover for the value of those articles, of course.

Mr. MERRICK: Those were not estimated by Mr. Lilligren.

The COURT: No, sir.

Mr. O'BRIEN: The safe was estimated in those values. I except to all that part of the charge which intends to permit the jury to find a verdict for any property other than that which they believe to be seized and taken by the defendant; on that question the burden of proof is on the plaintiff to show the taking by the defendant; of course, as to what we admit I make no question.

The COURT: I understand all the witnesses to testify or the witnesses upon the part of the defendant to testify that they took all the goods that were in the store, with the exception of some specific articles.

Mr. O'BRIEN: Including the safe; they didn't take the safe; they say they didn't take the safe; they say this inventory which is in evidence is a full and complete inventory of all they took; that everything they took is contained in the inventory, and that a part of the goods taken in the inventory were taken back.

283 The COURT: Yes, sir. You may retire, gentlemen.

The above and foregoing, together with the exhibits hereto annexed, contains all the testimony and evidence offered or received in said cause.

By consent of counsel the jury were permitted to bring in a sealed verdict.

A stay of proceedings for forty days consented to by Mr. Merrick, and, if necessary, to be extended by him.

And thereafter, on the 14th day of November, 1884, the jury duly returned into court a verdict in favor of said plaintiff and against said defendant for the sum of $5,432.80.

284 EXHIBIT "A."

Complaint.

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

JOHN H. PURDY, Doing Business under the Firm Name of J. H. Purdy & Co., Plaintiff,

vs.

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Partners under Firm Name of Van Norman & Brother, Defendants.

Now comes the above-named plaintiff, and, for cause of action against the above-named defendants, alleges and shows to the court—

That plaintiff was, on the 17th day of September, 1883, ever since has been, and still is doing business under the firm name of J. H. Purdy & Co.; that defendants were, on the 17th day of September, 1883, ever since have been, and still are partners under the
285 firm name of Van Norman & Brother; that between the 17th day of September, 1883, and the 26th day of October, 1883, plaintiff, at the special instance and request of defendants, sold and delivered to defendants goods, wares, and merchandise of the reasonable value of $537.43.

That defendants at the times of the delivering of said goods and wares and merchandise agreed and promised to and with plaintiff to pay for the same the sum of $537.43.

That there is now due and owing from defendants to plaintiff the sum of $537.43, no part or portion of which has ever been paid save and except the sum of $12.

That there is now due and owing and wholly unpaid from defendants to plaintiff for said goods, wares, and merchandise the sum of $525.43.

Whereof plaintiff demands judgment against defendants for the sum of $525.43.

MERRICK & MERRICK,
Plaintiff's Attorneys.

STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

A. N. Merrick, being duly sworn, on oath says that he is one of the plaintiff's attorneys in the above-entitled action; that the foregoing complaint is true to the best of his knowledge, information, and belief, and that the reason why this verification is not
286 made by said plaintiff is that said plaintiff is absent from the county of Hennepin, Minnesota, where resides affiant, one of his paid attorneys.

A. N. MERRICK.

Subscribed and sworn to before me this 31st day of December, 1883.

[SEAL.] L. A. MERRICK,
Notary Public, Hennepin County, Minnesota.

(Endorsed on back:) State of Minnesota, county of Hennepin. District court. John H. Purdy, doing business as J. H. Purdy & Co., *vs.* Axel B. Van Norman and Gustave Van Norman, partners as Van Norman Brothers. Complaint filed Dec. 31, 1883. E. J. Davenport, clerk. Merrick & Merrick, pl'ff's att'ys.

287 STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

JOHN H. PURDY, Doing Business under Name of J. H. Purdy & Co., Plaintiff,

vs.

AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners under Firm Name of Van Norman & Brother, Defendants.

Affidavit for Attachment.

STATE OF MINNESOTA, } *ss:*
County of Hennepin, }

A. N. Merrick came personally before me and, being duly sworn, deposes that he is the agent and attorney of John H. Purdy, doing business under the name of J. H. Purdy and Company, the plaintiff in the above-entitled action, which is brought for the recovery of money, and that a summons has been duly issued therein; that a cause of action exists against the defendant and in favor of said plaintiff therein, and the amount of said plaintiff's claim
288 therein is five hundred and twenty-five and $\frac{43}{100}$ dollars, and the ground thereof is as follows—that is to say: That between the 17th day of September, A. D. 1883, and the 26th of October, A. D. 1883, plaintiff sold and delivered, at the special instance and request of defendants, goods, wares, and merchandise of the reasonable value and of the agreed price of $537.43, no part or portion of which has been paid save the sum of $12.00, and that there is now due and owing and wholly unpaid from said defendants to plaintiff the sum of $525.43.

And that the said Axel B. Van Norman and Gustave Van Norman, partners under the firm name of Van Norman and Brother, are about — assign, secrete, and dispose of their property with intent to delay and defraud their creditors.

And said affiant further deposes and says that said plaintiff is in danger of losing his said claim by reason of the facts aforesaid, unless a writ of attachment issue, and prays that such writ of attachment may be allowed and issued against the property of said defendant therein, according to the statute in such cases made and provided; that no previous application has been made therein for such order; and further saith not.

A. N. MERRICK.

Subscribed and sworn to before me on this 31st day of December, A. D. 1883.

L. A. MERRICK,
Notary Public, Hennepin County, Minnesota.

289 (Endorsed:) District court, county of Hennepin. John H. Purdy, doing business as J. H. Purdy & Co., against Axel

B. Van Norman and Gustave Van Norman, partners, etc. Affidavit for attachment to the clerk of said court. On filing the within affidavit and a bond approved by me in the within-entitled cause let a writ of attachment issue as within prayed. Dated Dec. 31, 1883. M. B. Koon, judge of said court. Filed Dec. 31, A. D. 1883. E. J. Davenport, clerk of said court. Merrick & Merrick, pl'ff's att'y.

290 *Bond for Attachment.*

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

JOHN H. PURDY, Doing Business as J. H. Purdy & Company, Plaintiff,

vs.

AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners, and Doing Business under the Firm Name of Van Norman & Brothers.

Know all men by these presents that John H. Purdy, doing business under the name of J. H. Purdy & Company, by his agent and attorney, A. N. Merrick, as principal, and B. B. Marshal and Louis P. Cravier, as sureties, are held and firmly bound unto Axel B. Van Norman and Gustav Van Norman, partners as Van Norman & Brothers, defendants above named, in the sum of two hundred and fifty dollars, to be paid to the said Axel B. Van Norman and Gustav Van Norman, partners as Van Norman & Brothers; for the payment whereof, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 31st day of December, A. D. 1883.

The condition of this obligation is such that whereas the
291 above-named plaintiff duly applied for a writ of attachment against the property of said defendants in this action, according to the statute in such case made and provided: Now, therefore, if the said defendants recover judgment, if the plaintiff shall pay all costs that may be awarded to said defendants — they may sustain by reason of the attachment, not exceeding the penalty of this bond, then this obligation shall be void; otherwise of force.

JOHN H. PURDY,
By his agent, A. N. MERRICK. [SEAL.]
B. B. MARSHAL. [SEAL.]
LOUIS P. CRAVIER. [SEAL.]

Signed, sealed, and delivered in presence of—

C. C. BENNETT.
L. A. MERRICK.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

Be it known that on this 31st day of December, A. D. 1883, before me personally — A. N. Merrick, as agent for John H. Purdy, and B. B. Marshall, Louis P. Cravier, to me well known to be the same persons who executed the foregoing bond, and they each severally acknowledged the same to be their own free act and deed, and A. N. Merrick acknowledged that he executed the same as the free act and deed of John Purdy.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

292 STATE OF MINNESOTA, }
County of Hennepin, } ss:

B. B. Marshall and Louis P. Cravier came before me personally, and, being by me first duly sworn, doth say, each for himself, that he is the surety above named; that he is a resident and freeholder of and in this State of Minnesota, and worth the amount of five hundred dollars specified in the foregoing bond above his debts and liabilities and exclusive of his property which is exempt from execution.

B. B. MARSHALL.
LOUIS P. CRAVIER.

Subscribed and sworn to before me on this 31st day of December, A. D. 1883.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

(Endorsed:) District court, county of Hennepin. John H. Purdy against Axel B. Van Norman. Bond for attachment. I hereby approve the within bond and the sureties therein. Dated De-
293 cember 31, A. D. 1883. M. B. Koon, district judge. Merrick & Merrick, plaintiff's attorneys. Filed December 31, 1883. E. J. Davenport, clerk.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

I hereby certify and return that under and by virtue of the writ of attachment hereto attached I have this 31st day of December, A. D. 1883, levied upon and attached all right, title, and interest of Axel B. Van Norman and Gustave Van Norman, partners as Van Norman & Brother, defendants named therein, in and to the following-described personal property, to wit:

Fifteen (15) gold watches complete.
Nine (9) gold-filled watches complete.
Six (6) gold watches complete.

Fourteen (14) silver watches complete.
Thirteen (13) nickel watches complete.

Dated this 31st day of December, 1883.

JAMES STODDART,
Sheriff of Hennepin County,
By JOHN PERERSON, *Deputy.*

294 *Writ of Attachment.*

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

JOHN H. PURDY, Doing Business Under the Firm Name of J. H. Purdy & Co., Plaintiff,

vs.

AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners as Van Norman & Brothers, Defendants.

STATE OF MINNESOTA, *County of Hennepin,* } *ss:*

The State of Minnesota to the sheriff of the county of Hennepin:

Whereas in the above-entitled action an application has been made to the proper officer for a writ of attachment against the property of Axel B. Van Norman and Gustave Van Norman, partners as Van Norman & Brother, defendants therein, setting forth by affidavit that a cause of action exists against such defendants and specifying the amount of the claim and the ground thereof, and that the defendants are about to assign, secrete, and dispose of their property with intent to delay and defraud their creditors, and the bond required by law has been duly executed and filed and said writ allowed and directed to issue by said officer: Therefore you are hereby commanded and required to attach and safely keep all the property of said Axel B. Van Norman and Gustave Van Norman, partners as Van Norman & Brother, within your
295 county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, which amounts to the sum of five hundred and twenty-five and $\frac{43}{100}$ dollars, as appears by the complaint in said action, together with costs and expenses, and that you proceed herein in the manner required of you by law.

Witness the Honorable Austin H. Young, judge of the district court aforesaid, at Minneapolis, Minn., this 31st day of December, in the year 1883.

[SEAL.] E. J. DAVENPORT, *Clerk.*

(Endorsed.)

STATE OF MINNESOTA, *County of Hennepin,* } *ss:*

I hereby certify and return that, after making the levy within

described under the within writ of attachment, the defendants within named, Axel B. Van Norman and Gustave Van Norman, duly assigned all of their property for the benefit of their creditors to one Charles Bennett, and the said Bennett having duly demanded the possession of all of said property levied by virtue of the within writ as assignee I delivered the same to him.

Dated December 31, 1883.

JAMES STODDART,
Sheriff Hennepin Co., Minn.

(Further endorsed.)

296 STATE OF MINNESOTA, *County of Hennepin,* } *ss:*

I hereby certify and return that at the city of Minneapolis, in said county and State, on the 1st day of January, A. D. 1884, I served the within writ and levy upon the within-named Van Norman Brothers personally by handing to and serving with*in* Axel B. Van Norman, one of said defendants, a certified copy thereof.

Dated January 1st, 1884.

JAMES STODDART,
Sheriff Hennepin County, Minn.,
By JOHN PETERSON, *Deputy.*

Sheriff's fees	$1 00
Mileage	20
	$1 20

[Endorsed:] District court, county of Hennepin. J. H. Purdy & Co. *vs.* Van Norman & Bro. (Writ of attachment.) Issued Dec. 31st, 1883. E. J. Davenport, clerk. Returned January 17, 1884. E. J. Davenport, clerk, by H. J. Altnoor, deputy. Merrick & Merrick, plaintiff's attorney.

297 *Clerk's Certificate.*

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

J. H. PURDY, Doing Business as J. H. Purdy & Co.,
vs.
AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Partners under Firm Name Van Norman Brother.

I, E. J. Davenport, clerk of the above-named court, do hereby certify that I have compared the paper writings to which this certificate is attached with the original complaint, affidavit, bond, and order for attachment and writ of attachment and return thereon in the above-entitled action, as the same appear of record and on file in the said clerk's office at the court-house, in said Hennepin county, Minnesota, and find the same to be a true and correct copy thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Minneapolis, this 8th day of November, A. D. 1884.

[SEAL.]

E. J. DAVENPORT, *Clerk*,
By C. N. DICKEY, *Deputy*.

298 & 299 *Schedule of Property in Insolvency.*

STATE OF MINNESOTA, *County of Hennepin:*

District Court.

In the Matter of AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners as Van Norman and Brother, Insolvent.

Description of property.	Incumbrances, if any.	Statement of particulars.	Estimated value.
All of the stock of goods, consisting of jewelry, gold and silver watches, clocks, and plated ware, furniture, and fixtures, situate, on the 31st day of December, 1883, in the store at number 419 Nicollet avenue, city of Minneapolis, of the total value of about nine thousand dollars.	---- ---- ----	That said stock and all of it was taken forcibly from the possession of the assignee on the 31st day of December, 1883, by H. R. Denny, United States marshal for the district of Minnesota, and for this reason affiant is unable to give a more particular description of said property.	$9,000

Dated January 9th, 1884.

AXEL B. VAN NORMAN.

300 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Axel B. Van Norman, one of the within-named insolvents, being first duly sworn, says that the within schedule is a true and correct statement of the property and effects of the said Axel B. Van Norman and Gustav Van Norman, partners under the firm name of Van Norman & Bro., on the 9th day of January, 1884.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 9th day of January, 1884.

[SEAL.]

J. J. HIRSCH,
Notary Public, Hennepin Co., Minn.

301 [Endorsed:] District court, county of Hennepin. In the matter of Axel B. Van Norman and Gustav Van Norman, partners as Van Norman and Brother, insolvent. Schedule of property. Filed Jan. 9, 1884. E. J. Davenport. C. B. Terrill, deputy.

302 EXHIBIT "B."

Know all men by these presents that whereas Axel B. Van Norman and Gustave Van Norman, partners as Van Norman & Brother, of Minneapolis, county of Hennepin, Minnesota, are indebted to divers persons in considerable sums of money, and by reason of losses and misfortunes are at present unable to discharge their just debts and liabilities as they mature; and whereas heretofore and within ten days prior to the making of these presents, to wit, on the 31st day of December, 1883, in an action pending in the district court in and for the county of Hennepin, State of Minnesota, wherein John H. Purdy, doing business as J. H. Purdy & Co., is plaintiff, and Axel B. Van Norman & Gustave Van Norman are defendants, there was on said day duly issued a writ of attachment against the property of said defendants, which said writ was duly levied upon the property of said defendants by the sheriff of said Hennepin county; and whereas the property of said defendants is now in the possession of said sheriff by virtue of said writ:

Now, therefore, this indenture, made this 31st day of December, A. D. 1883, between said Axel B. Van Norman and Gustave Van Norman, partners, etc., parties of the first part, and Charles C. Bennett, of Minneapolis, party of the second part, witnesseth: That the parties of the first part, in consideration of the premises and the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have
303 granted, bargained, sold, conveyed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, convey, assign, transfer, and set over, unto the said Charles C. Bennett, party of the second part, his heirs and assigns, all the lands, tenements, hereditaments, and appurtenances, goods, chattels, choses in action, claims, demands, property, and effects of every description belonging to the parties of the first part, wherever the same may be situated, and more particularly a certain stock of jewelry, silver, gold, and jewels of every name and description contained in the store No. 419 Nicollet Ave., city of Minneapolis, county of Hennepin, Minnesota; also the fixtures in the same, except such property as is by law exempt from levy and sale on execution:

To have and to hold the same and every part thereof to said party of the second part, his heirs and assigns, in trust, nevertheless, for the uses and purposes following:

1. To take possession of the said property and to sell and dispose of the same with all reasonable diligence, and to convert the same into money; and also to collect all such debts and demands hereby assigned as may be collectible; and with and out of the proceeds of such sales and collections—

2. To pay and discharge all the just and reasonable expenses, costs, and charges of executing this assignment and of carrying into effect the trust hereby created, including the reasonable compensation of the party of the second part for his services in executing the said trust.

3. To pay and discharge in full, if the residue of said pro-
304 ceeds be sufficient for that purpose, all the debts and liabilities now due or to become due from said party of the first part to all their creditors who shall file releases of their debts and claims against the said party of the first part, as by law provided, together with all interest due and to become due thereon; and if the residue of said proceeds shall not be sufficient to pay said debts and liabilities and interest in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest proportionably to their respective amounts, and in accordance with the statute in such case made and provided; and if, after payment of all the costs, charges, and expenses attending the execution of said trust and the payment and discharge in full of all the said lawful debts owing by the said part- of the first part, there shall be any surplus of the said proceeds remaining in the hands of the party of the second part, then—

4. To repay such surplus to the party of the first part, their executors, administrators, or assigns.

And for the more effectual execution of the trusts hereby created the party of the first part do hereby make, constitute, and appoint the parties of the second parties true and lawful attorney irrevocable, with full power and authority to do and perform all acts, deeds, matters, and things which may be necessary to the full execution of said trust, and for the purposes of said trust to ask, demand, recover, and receive, of and from all and every person and persons, all the property, debts, and demands belonging and owing to the parties of the first part, and to give acquittances for the same;
305 and to sue, prosecute, defend, and implead for the same; and to execute, acknowledge, and deliver all deeds and instruments of conveyance necessary or proper for the better execution of said trust.

In witness whereof said parties of the first part have hereunto set their hands and seals the day and year first above written.

VAN NORMAN & BRO. [SEAL.]
AXEL B. VAN NORMAN. [SEAL.]
GUSTAV VAN NORMAN.

Signed, sealed, and delivered in presence of—
N. S. LLJENYREN.
L. A. MERRICK.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

I, Louis A. Merrick, a notary public within and for said county, do hereby certify that on this thirty-first day of December, A. D. 1883, personally appeared before me Axel B. Van Norman and Gustav Van Norman, to me well known to be the same persons described in and who executed the foregoing instrument, and who acknowledged that they executed the same freely and voluntarily for the uses and purposes therein expressed.

[SEAL.] LOUIS A. MERRICK,
Notary Public, Hennepin Co., Minn.

306 I, Charles C. Bennett, do hereby accept the trust created by the above instrument and agree faithfully to perform the same.

Dated December —.

CHARLES C. BENNETT.

In presence of—
L. A. MERRICK.
A. N. MERRICK.

STATE OF MINNESOTA, *County of Hennepin,* } ss:

I, Louis A. Merrick, within and for said county, do hereby certify that on this 31st day of December, A. D. 1883, personally appeared before me Charles C. Bennett, to me well known to be the same person described in and who executed the foregoing instrument, and who acknowledged that he executed the same freely and voluntarily for the uses and purposes therein expressed.

L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

(Endorsed:) A true copy. Axel B. Van Norman and Gustav Van Norman, partners as Van Norman & Bro., to Charles C. Bennett.

307 STATE OF MINNESOTA, *County of Hennepin,* } ss:

OFFICE CLERK OF DISTRICT COURT.

I hereby certify that the within instrument was filed in this office on the 31st day of December, 1883, at 7 o'clock p. m.

E. J. DAVENPORT,
Clerk of the District Court.

Affidavit.

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

In the Matter of the Assignment of AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Partners under Firm Name of Van Norman & Bro., Insolvent.

HENNEPIN COUNTY, ss:

Axel B. Van Norman, first being sworn, on oath deposes and says that he is a member of the firm of Van Norman & Brother, composed of this affiant and Gustave Van Norman; that said firm have made an assignment of all its property not exempt from execution, and all for the benefit of all the creditors of said firm, and that the property so assigned and transferred to Charles C. Bennett does not exceed in value and amount the sum of nine thousand dollars, and that the property so assigned consists of a stock of jewelry and the

fixtures situate in the store at number 419 Nicollet avenue, in the city of Minneapolis, county of Hennepin, and State of Minnesota.

AXEL B. VAN NORMAN.

308 Subscribed and sworn to before me this 31st day of December, A. D. 1883.

[SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

(Endorsed:) State of Minnesota, county of Hennepin, *ss:* District court. In the matter of the assignment of Axel B. Van Norman and Gustave Van Norman, partners as Van Norman Brothers, to Chas. C. Bennett. Affidavit of Axel B. Van Norman as to value of property assigned. Filed January 2, 1884. E. J. Davenport, clerk, by C. B. Tirrell, deputy. Merrick & Merrick, attorneys for assignee.

Know all men by these presents that we, Charles C. Bennett, as principal, and Louis P. Crevier, Alfred Soderstrom, Gust. Lundell, O. Heglund, John A. Turnquist, Peter M. Mark, and A. J. Rosander, sureties, are held and firmly bound unto the State of Minnesota in the sum of eighteen thousand dollars, lawful money of the United States of America, to be paid to the State of Minnesota; for
309 which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 31st day of December, one thousand eight hundred and eighty-three.

The condition of the above obligation is such that whereas Axel B. Van Norman and Gustave Van Norman, partners under firm name of Van Norman & Brother, of Minneapolis, in the county of Hennepin, State of Minnesota, have, by instrument in writing dated the 31st day of December, 1883, assigned all their property not exempt by law from levy and sale on execution to said Charles C. Bennett for the benefit of all the creditors of said Axel B. Van Norman and Gustave Van Norman, without preferences, who shall file releases of their debts and claims against such debtors as forwarded by said deed of assignment:

Now, therefore, if said Charles C. Bennett shall faithfully and justly perform all the duties of his trust as such assignee and shall perform and abide by all such order as the court may give herein, then the above obligation to be void; otherwise to remain in full force and virtue.

CHARLES C. BENNETT. [SEAL.]
LOUIS P. CREVIER. [SEAL.]
ALFRED SODERSTROM. [SEAL.]
GUST. LUNDELL. [SEAL.]
O. HUGLUND. [SEAL.]
JOHN A. TURNQUIST. [SEAL.]
PETER M. MARK. [SEAL.]
A. J. ROSANDER. [SEAL.]

Sealed and delivered in presence of—
A. N. MERRICK.
L. A. MERRICK.

310 STATE OF MINNESOTA, } ss:
County of Hennepin, }

P. Crevier, Alfred Soderstrom, Gust. Lundell, Charles C. Bennett, Louis Noglund, John A. Turnquist, Peter M. Mark, A. J. Rosander came personally before me on this 31st day of December, A. D. 1883, to me well known to be the same persons who executed the foregoing bond, and each acknowledged the same to be his own free act and deed.

[SEAL.]

L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

The below-named persons, being first duly sworn, doth say, each for himself, that he is the same person as the surety above named and is a resident and freeholder of and in the State of Minnesota and worth the sum of — dollars therein stated *dollars* above his debts and liabilities and exclusive of his property exempt from execution.

LOUIS P. CREVIER.
ALFRED SODERSTROM.
GUST. LUNDELL.
O. HOGLUND.
JOHN A. TURNQUIST.
PETER M. MARK.
A. J. ROSANDER.

Subscribed and sworn to before me on this — day of ——, A. D. 18—.

—— ——.

311 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Louis P. Crevier, being sworn, says that he is the surety above named and is a resident and freeholder of and in the State of Minnesota and worth the sum of two thousand dollars above his debts and liabilities and exclusive of his property exempt from execution.

Alfred Soderstrom, being sworn, says that he is the surety above named; that he is a resident and freeholder of and in the State of Minnesota; that he is worth the sum of two thousand dollars above his debts and liabilities and exclusive of his property exempt from execution.

Gust. Lundell, being sworn, says that he is a resident of and freeholder of and in the State of Minnesota and worth the sum of $5,000 exclusive of his property exempt from execution and above his debts and liabilities.

O. Hoglund, being sworn, says that he is the surety above named; that he is a resident and freeholder of and in the State of Minnesota and worth the sum of $2,000 above his debts and liabilities and exclusive of his property exempt from execution.

John Turnquist, being sworn, says that he is the surety above

named; that he is a resident of and freeholder in the State of Minnesota and worth the sum of $2,000 above his debts and liabilities and exclusive of his property exempt from execution.

Peter M. Mark, being sworn, says that he is the surety above named; that he is a resident of and freeholder in the State
312 of Minnesota and worth the sum of $2,500 above his debts and liabilities and exclusive of his property exempt from execution.

A. J. Rosander, being sworn, says that he is the surety above; that he is a resident of and freeholder in the State of Minnesota and worth the sum of $2,500 above his debts and liabilities and exclusive of his property exempt from execution.

Subscribed and sworn to before me this 31st day of December, 1883.

[SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

(A true copy.)

(Endorsed:) District court, county of Hennepin. In the matter of the assignment of Axel B. Van Norman and Gustave Van Norman, partners as Van Norman & Brother.

313 *Bond of Assignee.*

I hereby approve the within bond and the sureties therein named. Dated December 31, 1883.

A. H. YOUNG,
Judge of the District Court.

Filed January 2, 1884.

E. J. DAVENPORT, *Clerk*,
By C. B. TIRRELL,
Deputy Clerk.

314 *Schedule of Property in Insolvency.*

STATE OF MINNESOTA, *County of Hennepin:*

District Court.

In the Matter of AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners as Van Norman and Brother, Insolvent.

Description of property.	Incumbrances, if any.	Statement of particulars.	Estimated value.
All of the stock of goods, consisting of jewelry, gold and silver watches, clocks, and plated ware, furniture, and fixtures, situate, on the 31st day of December, 1883, in the store at number 419 Nicollet avenue, city of Minneapolis, of the total value of about nine thousand dollars.	----------	That said stock and all of it was taken forcibly from the possession of the assignee on the 31st day of December, 1883, by H. R. Denny, United States marshal for the district of Minnesota, and for this reason affiant is unable to give a more particular description of said property.	$9,000

Dated January 9th, 1884.

AXEL B. VAN NORMAN.

315 STATE OF MINNESOTA, *County of Hennepin,* } *ss:*

Axel B. Van Norman, one of the within-named insolvents, being first duly sworn, says that the within schedule is a true and correct statement of the property and effects of the said Axel B. Van Norman and Gustav Van Norman, partners under the firm name of Van Norman & Bro., on the 9th day of January, 1884.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 9th day of January, 1884.

[SEAL.] J. J. HIRSCH,
Notary Public, Hennepin Co., Minn.

316 [Endorsed:] District court, county of Hennepin. In the matter of Axel B. Van Norman and Gustav Van Norman, partners as Van Norman and Brother, insolvent. Schedule of property. Filed Jan. 9, 1884. E. J. Davenport. C. B. Terrill, deputy.

317 & 318 STATE OF MINNESOTA, *County of Hennepin:*

District Court.

In the Matter of AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners as Van Norman and Brother, Insolvents.

Names of creditors.	Residences.	Amount.	When and where contracted.	Nature and consideration.	How received.
W. B. Clapp, Bro. & Co.	Chicago, Ill.	$3,744 81	Chicago, September 8, 1883	Goods, wares, and merchandise	
Lapp & Flershem	Chicago, Ill.	700 00	Chicago, September 8, 1883	" "	
Lapp & Flershem	Chicago, Ill.	2,500 00	Minneapolis, December, 1883	" "	
Lapp & Flershem	Chicago, Ill.	500 00	Minneapolis, December, 1883	" "	
John N. Purdy	Chicago, Ill.	525 00	Chicago, September 8, 1883	" "	
Stein & Ellogan	Chicago, Ill.	315 00	Chicago, September 8, 1883	" "	
A. J. Warner & Co.	Minneapolis, Minn.	500 00	Minneapolis, October 15, 1883	" "	
Carter, Sloan & Co.	New York city	420 00	Minneapolis, October 27, 1883	" "	
J. Herzog	New York city	645 00	Minneapolis, October 24, 1883	" "	
H. Oppenheimer & Co.	Chicago, Ill.	405 00	Minneapolis, October 27, 1883	" "	
Weskeming Bros.	Cincinnati, Ohio	200 00	Minneapolis, October 19, 1883	" "	
Faulkner & Oppenheimer	New York city	968 00	Minneapolis, December 1, 1883	" "	
A. Morse & Son	Chicago, Ill.	140 00	Minneapolis, November 8, 1883	" "	
A. Kirsh & Co.	Chicago, Ill.	500 00	Minneapolis, October 15, 1883	" "	
C. Preusser & Brothers	Milwaukee, Wis.	700 00	Minneapolis, October 26, 1883	" "	
C. Rorswog & Son	New York city	296 00	Minneapolis, November 12, 1883	" "	
Edward Todd & Co.	New York city	203 00	Minneapolis, November 14, 1883	" "	
J. W. Tufts	Boston, Mass.	600 00	Minneapolis, November 7, 1883	Goods, wares, &c.	
Black & Co.	Detroit, Mich.	161 00	Minneapolis, December 1, 1883	" "	
J. Foley	New York city	225 00	Minneapolis, November 30, 1883	" "	
Greenbury, Goodman & Pollock	New York city	454 00	Minneapolis, December 3, 1883	" "	
M. J. Effenstein & Co.	Chicago, Ill.	400 00	Minneapolis, December 25, 1883	" "	
B. Allen & Co.	Chicago, Ill.	300 00	Minneapolis, December 22, 1883	" "	
Otto Young & Co.	Chicago, Ill.	52 00	Minneapolis, December 24, 1883	" "	
Carl Van Norman	Tuskona, Sweden	1,000 00	Winnepeg, August 15, 1883	Borrowed money	
J. B. Liljengrin	Minneapolis, Minn.	100 00	Minneapolis, December, 1883	Fixtures move	
Gale & Co.	Minneapolis, Minn.	45 00	Minneapolis, November, 1883	Insurance	

Dated Minneapolis, Minnesota, Jan. 9, 1884.

AXEL B. VAN NORMAN.

319 STATE OF MINNESOTA, *County of Hennepin,* } ss:

Axel B. Van Norman, being first duly sworn, says that the within schedule is a true and correct statement of the debts and liabilities of the said Axel B. Van Norman and Gustav Van Norman, partners as Van Norman & Brother, insolvents within named, and that he is one of said insolvents debts owing by said Van Norman and Brother on the 31st day of December, 1884.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 9th day of January, 1884.

[NOTARIAL SEAL.] I. J. HURSCH,
Notary Public, Hennepin Co., Minn.

320 [Endorsed:] A true copy. District court, county of Hennepin. In the matter of Axel B. Van Norman and Gustav Van Norman, partners as Van Norman and Brother, insolvent. Schedule of debts. Filed Jan. 9, 1884. E. J. Davenport, clerk. C. B. Terrill, deputy.

321 *Clerk's Certificate.*

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

In the Matter of the Assignment of AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners as Van Norman Brothers.

I, E. J. Davenport, clerk of the above-named court, do hereby certify that I have compared the paper-writings to which this certificate is attached with the original deed of assignment, affidavit as to value of property, bond of assignee, schedule of property, and schedule of debts in the above-entitled cause as the same appear of record and on file in the said clerk's office, at the court-house, in said Hennepin county, Minnesota, and find the same to be a true and correct copy thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Minneapolis, this 8th day of November, A. D. 1884.

[SEAL.] E. J. DAVENPORT, *Clerk,*
By C. N. DICKEY, *Deputy.*

322 EXHIBIT "C."

To H. R. Denny, Esq., United States marshal, district of Minnesota.

SIR: The undersigned hereby demands that you surrender to him forthwith the stock of goods and the fixtures, lately the property of Van Norman and Brothers, situate in the store number 419 Nicollet avenue, in the city of Minneapolis, on the 31st day of December, 1883, the undersigned being the duly appointed and qualified assignee of said Van Norman and Brothers, and being entitled to

the possession of said stock, fixtures, and store 419 Nicollet avenue, the undersigned being in peaceful possession of said stock, fixtures, and store under and by virtue of said assignment on said 31st day of December, 1883, from which he was by yourself and deputies removed without authority of law, but *vi et armis*, on the 31st day of December, A. D. 1883; that unless said stock, fixtures, and store are forthwith surrendered to the undersigned he will hold you responsible for the value of said stock, fixtures, and store and all damages occasioned by such unlawful taking and detention.

Dated January 2nd, 1884.

CHARLES C. BENNETT,
Assignee of Axel B. Van Norman and Gustave Van Norman, Partners as Van Norman & Brother.

323 MERRICK & MERRICK,
Attorneys for Assignee, Minneapolis, Minn.

(Endorsed:) Demand on H. R. Denny. Due service of a copy of within demand admitted this 2nd day of January, A. D. 1884.

324 EXHIBIT "D."

Copy of Inventory of the Van Norman Bros.' Stock.

Cash, $6.75.

1 robe.
6 diamond rings.
50 gold rings.
70 " "
128 chains and lockets.
9 plated chains.
14 " "
60 filled and solid rings.
22 plated necklaces.
40 gold pens.
9 roll-plate slide guards.
31 toothpicks.
4 gold pencils.
8 roll necklaces.
6 plated ladies' roll rests.
43 " bracelets.
7 crosses, filled.
3 gold thimbles.
1 locket.
3 gold crosses.
14 pair cuff buttons.
18 pair plated "
8 studs.
85 emblem pins.
325 29 lace pins.
42 pins.

19 gold pens.
7 " "
24 roll-plated sets.
10 sets.
1 doz. silver watch chains.
2 " white metal.
2 fire gilt chains.
4 nickel watches.
1 " 92 movements.
1 Columbia.
I Broadway.
1 Swiss.
1 Broadway.
1 Elroy.
1 Dexter.
16 opera glasses.
9 " "
6 ladies' pins.
10 children's rings.
1 opera glass.
1 field glass.
1 regulator.
9 silver thimbles.
85 sets of ear-rings.
1 " " diamond.
78 cards wire pins.
326 70 pair cuff buttons.
1 box collar buttons & pins.
1 French marble clock.
1 Swiss " "
1 " " "
4 bronze figures.
1 water pitcher.
1 case.
1 perfumery stand.
1 toilet set.
1 jewel case.
1 cake basket.
1 reflecting window case.
2 upright cases.
2 boxes to "
2 counter show-cases.
3 counters.
8 toilet sets.
2 water pitchers.
3 butter dishes.
2 holders.
1 sugar dish.
2 child sets in coral.
1 set, 4 pieces.
49 clocks.

11 cake and fruit dishes.
2 syrup cups.
3 castors.
327 3 services.
6 goblets.
1 cream and sugar in stand.
8 pickle castors.
3 ind. sugars.
2 butter dishes.
1 small figure.
7 castors.
9 fruit dishes.
1 stove.
28 alarm clocks.
13 steel chains.
4 dozen forks.
4¾ dozen table-spoons.
2½ " tea "
¼ " butter knives.
⅓ " sugar shells.
1½ " plated knives.
18 salt and peppers.
23 wag glasses.
3 card cases.
7 boquet holders.
5 perfumery stands.
2 jewel cases.
1 ind. salt, pepper, and napkin ring.
2 toothpick holders.
1 nut-cracker.
17 napkin rings.
328 1 journal.
1 ledger and all books and book accounts.
8 gold-bow spectacles.
1 " eye-glass.
9 specs.
33 eye-glasses.
1 jeweler's slate.
1 eagle-case gold watch, complete.
1 eagle-case gold watch, complete, ladies'.
1 case without movement.
1 14-kr. gold watch, complete.
1 ladies' gold case.
1 gold watch, complete.
1 ladies' gold watch, complete, 14 kr.
1 eagle-case ladies' gold watch.
1 " " " " " complete.
3 ladies' gold watches, 14 kr.
1 gold case, 14 kr.
1 eagle-case ladies' gold watch.
1 " " " " " complete.

1 gent's gold watch (10 kr.).
1 " " " (14 ")
1 nickel watch.
2 silver watches.
1 eagle-case gold watch, complete.
1 eagle-case gold watch.
7 Boss Dunbar filled case, complete.
1 10 kr. gent's gold watch.
1 eagle case.
1 Boss filled watch, complete.
329 1 gent's gold eagle case.
12 silver cases.
11 nickel watches.
1 silver watch, complete.
9 " " "
1 " case.
12 silver watches, complete.
3 watchmaker signs.
1 awning.
3 sets gas fixtures.
3 shelves.
1 carpet.

EXHIBIT "E."

J. H. Purdy & Co., 125 and 127 State street.

Tools and materials for watchmakers.
Jewelers and kindred trades.
Spectacles, chains, boxes, etc.

CHICAGO, *Dec.* 29, 1883.

Merrick & Merrick.

GENTS: After our talk deem it proper that we enclose statement, on which you will act as per circumstances.

Respectfully, J. H. PURDY & CO.

330 EXHIBIT "F."

J. H. Purdy & Co., 125 and 127 State street.

Tools and materials for watchmakers.
Jewelers and kindred trades.
Spectacles, chains, boxes, etc.

CHICAGO, *Dec.* 29, 1883.

Merrick & Merrick.

GENTS: In addition to letter of this morning, desire to state that, if it becomes necessary know, my name is John H. Purdy; and I am the only member of the firm of J. H. Purdy & Co.

Yours, J. H. PURDY.

331 EXHIBIT "G."

Statement.

CHICAGO, *Dec.* 28, 1883.

Van Norman Bros. in account with J. H. Purdy & Co., 125 State street, room 6.

1883.	To acc't rendered—				
Sept. 17.	To merchandise		359 52		
" 19.	"	"	12 75		
" 19.	"	"	33 26		
" 20.	"	"	4 50		
" 24.	"	"	37 00		
" 25.	"	"	45 00		
Oct. 1.	"	"	8 50		
" 5.	"	"	28 50		
" 26.	"	"	8 40		
					537 43
		CR.			
Oct. 1	Returned				12 00
					525 43

332 EXHIBIT "H."

Form No. 1.

The Western Union Telegraph Company.

Number Ch. 14.	Sent by Jo.	Rec'd by G.	Check. 17 paid.

Received at 1 p. m., Dec. 30, 1883.
Dated Chicago, Ills., 30.

To Merrick and Merrick, 408 Nicollet Ave., Minneapolis:

Discovered another five hundred liability. By all means arrange Sunday; execute Monday, as talked. Much talk here.

J. H. PURDY.

333 EXHIBIT "Z."

United States Circuit Court for the District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners Doing Business under the Firm Name and Style of Lapp & Flershem, Plaintiffs,

against

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under the Firm Name and Style of A. B. Van Norman & Bro., Defendants.

The plaintiffs above named, for a cause of action against the defendants above named, respectfully show to this court and allege—

That during all the time hereinafter mentioned these plaintiffs were and now are copartners doing business at the city of Chicago, State of Illinois, under the firm name and style of Lapp & Flershem, and during all such times were and now are citizens and residents of the State of Illinois, and that said defendants were and now are citizens and residents of the State of Minnesota and
334 have during all such times been and now are engaged in business as jewelers at the city of Minneapolis, in said State of Minnesota, under the firm name and style of A. B. Van Norman & Bro.; that heretofore, and between the 8th day of September, 1883, and the 18th day of December, 1883, these plaintiffs, at the special instance and request of said defendants, sold and delivered to said defendants certain goods, wares, and merchandise to the amount of and of the reasonable value of four thousand and twenty-five and seventy-one hundredths dollars ($4,025.70), which said sum said defendants then and there promised and agreed to pay therefor, and which said goods, wares, and merchandise were reasonably worth the sum of $4,025.70.

That no part of said sum has ever been paid, save the sum of $250 paid these plaintiffs by said defendants on the 8th day of September, 1883, and there is now justly due and owing from said defendants to these plaintiffs, in the premises, the sum of three thousand seven hundred and seventy-five and seventy-hundredths dollars ($3,775.70); and, further complaining, these plaintiffs allege that during all of the time hereinbefore mentioned and all of the times hereinafter mentioned, to wit, at the times of the purchase of the said goods, between said September 8th and said December 18th, 1883, and at the times of the purchase of the said goods and at divers times theretofore, both before and after the said 8th day of September, 1883, the defendants, with a view to make said purchases, falsely, fraudulently, and with intent to cheat and defraud these plaintiffs out of said goods and out of the value thereof, represented to these plaintiffs that they, said defendants,
335 were solvent; that their assets largely exceeded their liabilities; that they intended to continue in their aforesaid business beyond the time hereinafter mentioned, and that they intended to dispose of their goo ls in the ordinary course of trade as merchants, and that they intended to pay for the same when due; that they intended to make said goods part of a large stock of goods and merchandise then held and owned and to be held and owned by them in their said trade, and to dispose of said goods and the rest of said stock in the ordinary course of their trade as said merchants; that each and every such representation was false and fraudulent to the knowledge of said defendants when made, and were made by them with intent to cheat and defraud these plaintiffs out of said goods and out of the value and price thereof; that these plaintiffs, relying upon each and all of such allegations, and induced thereby, did on the said 8th day of September, 1883, and thereafter from time to time, up to and including the 18th of December, 1883, sell and deliver to the defendants goods to the value of and at the agreed price hereinbefore stated, and upon a credit of four

months from the said 8th day of September aforesaid and the respective times of the several sales made by the plaintiffs to defendants as aforesaid, up to and including the 18th day of December, 1883, and which said goods these plaintiffs would not have so sold to said defendants upon said credit or upon any credit had they known or suspected the falsity of any of such representations or the aforesaid fraudulent design of said defendants.

336 That after the transaction aforesaid and the receipt by said defendants of said goods to the amount hereinbefore stated the said defendants, in pursuance of said scheme of fraud, and with the intent to cheat these plaintiffs out of said goods and the value thereof, fraudulently and secretly disposed of a large quantity of said goods or concealed the same, and withdrew them from their said store and stock and concealed them in some place or disposed of them in some manner unknown to these plaintiffs.

That they then stated to these plaintiffs that their said assets did not exceed their liabilities, but that, on the contrary, their liabilities largely exceeded their assets, and that they could not and would not pay for the said goods, and that unless these plaintiffs would accept fifty cents on the dollar for their said goods, so sold as aforesaid, that said defendants would assign and dispose of the same and all of the same, and leave these plaintiffs wholly remediless in the premises.

And these plaintiffs aver the fact to be that the said defendants, by said false representations and statements, obtained from these plaintiffs all and singular the goods aforesaid of the value aforesaid and upon the credit aforesaid, with the design and intent then had and entertained by said defendants and each of them to thereby obtain the possession of the said goods, and during said term of credit secretly and fraudulently conceal, carry, or dispose of the same, and not to pay the said plaintiffs anything therefor, or, at least, but a small portion of their value, and thereby cheat and defraud these plaintiffs out of said goods and the value thereof. Where-

337 fore plaintiffs demand judgment against said defendants and each of them for the sum of three thousand seven hundred and seventy-five dollars and seventy cents ($3,775.70), with interest thereon from the 18th day of December, 1883, and for the costs and disbursements of this action.

O'BRIEN & WILSON,
Plaintiffs' Attorneys, St. Paul, Minn.

Filed this 31st day of December, 1883.

OSCAR B. HILLIS, *Clerk.*

STATE OF MINNESOTA, } ss :
County of Ramsey, }

C. D. O'Brien came before me personally, and, being duly sworn, doth say that he is one of the plaintiffs' attorneys in the above-entitled action; that the foregoing pleading is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said plaintiffs or one of them

is that they are absent from the county of Ramsey, Minnesota, wherein resides this affiant and all their attorneys; and further sayeth not.

C. D. O'BRIEN.

Subscribed and sworn to before me this 31st day of December, 1883.

DANIEL B. VERMILYE,
Notary Public, Minn.

338 *Answer.*

United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners Doing Business under the Firm Name and Style of Lapp & Flershem, Plaintiffs,

vs.

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under the Firm Name and Style of A. B. Van Norman and Brother, Defendants.

Now come the above-named defendants, and, for answer to the above-named plaintiffs' complaint, deny each and every allegation, matter, and thing stated and the whole thereof in said complaint contained save and except as hereinafter changed, modified, or qualified, or specifically and in so many words admitted to be true; admit the purchase of certain goods, wares, and merchandise of plaintiffs between the 8th day of September, 1883, and the 18th day of December, 1883, and amounting in the aggregate to $4,025.70, and that no part of said $4,025.70 has been paid save and except the sum of $250.00, and that at the time of the commencement of this action there was a balance owing but not yet due said plaintiffs from these defendants of $3,775.70.

339 And defendants, further answering said plaintiffs' complaint, aver the truth to be that on or about the 8th day of September, A. D. 1883, defendants purchased goods, wares, and merchandise of plaintiffs direct, amounting in the aggregate to some $800.00, upon four months' credit; that subsequently these defendants purchased other goods, wares, and merchandise, at Minneapolis, from one Moreland, agent of said plaintiffs, and amounting to some ——, which was to be paid for in four months' time; and these defendants aver that all of said goods, wares, and merchandise so purchased by them of said plaintiffs were purchased in good faith and with the intent to pay for the same as agreed.

And defendants positively and specifically deny that at the time *of the time* of the purchase of said goods, between the 8th day of September, 1883, and the 18th day of December, 1883, or at other times before or after the said 8th day of September, 1883, having, with a view to make said purchases of said goods falsely and fraudulently, and with intent to cheat and defraud these plaintiffs out of said goods and the reasonable value of the same, made any false or fraudulent representations with reference to their assets or held out

or made any false or fraudulent representations to said plaintiffs to induce the sale of said goods to said defendants; and defendants aver that plaintiffs and their said agent well knew and understood the financial condition of defendants; that said agent was frequently in defendants' store, saw defendants' stock of goods and the furniture and fixtures in said store, and was capable of judging of
340 the value of the same; that at the time of the last purchase of goods of plaintiffs defendants told the agent of said plaintiffs that they did not like to take so many goods; that they were afraid they could not pay for the same in four months, and that said agent then told defendants that plaintiffs would extend the time for payment in the event of their not being able to pay for the same in four months, and said agent urged said goods upon defendants.

And defendants deny having at any time or place secreted or concealed any of their property with intent to cheat and defraud plaintiffs or any of their creditors; deny having at any time or place sold or disposed of any of their goods, except in the usual and ordinary course of business or trade; deny having threatened to make an assignment with intent to cheat and defraud plaintiffs or any of their creditors, and aver the truth to be that when an action was brought against defendants by W. B. Clapp & Co., and when it seemed impossible for defendants to meet and satisfy the demands against them as they became due, defendants were advised that it was best for them to compromise with all of their creditors upon a fair and just basis; that in accordance with such advice, and upon the suggestion of their home creditors, defendants did attempt to compromise with all of their creditors, and with no intent or purpose, but to protect the rights and interests of all of their creditors and prevent any illegal and unjust preferences; and defendants deny specifically each and every allegation of fraud or fraudulent intent or fraudulent representation and statement alleged and
341 claimed to have been made by defendants to said plaintiffs, contained in said plaintiffs' complaint and not hereinbefore specifically contradicted or denied; and these defendants deny that any part or portion of the $3,775.70 mentioned and claimed in said plaintiffs' complaint was due and payable at the time of the commencement of this action. Wherefore defendants pray that said action be hence dismissed, and that said plaintiffs take nothing by the same, and that defendants have judgment against said plaintiffs for their proper costs and expenses incurred in said action.

MERRICK & MERRICK,
Defendants' Attorneys.

STATE OF MINNESOTA, } ss:
Hennepin County, }

Axel B. Van Norman, first being duly sworn, on his oath sayeth he is a member of the firm of Van Norman & Brother and one of the defendants in the above-entitled action, and he knows the contents of the foregoing answer; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true, and that

this verification is made for and on behalf of said firm and of said defendants and each of them.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 19th day of January, 1884.

[NOTARIAL SEAL.] J. J. NIRSCH,
Notary Public, Hennepin County, Minn.

Filed January 19th, 1884.

342 United States Circuit Court for the District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners Doing Business under the Firm Name and Style of Lapp & Flershem, Plaintiffs,

against

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under the Firm Name and Style of A. B. Van Norman & Bro., Defendants.

Whereas Peter Lapp and Lemuel W. Flershem, copartners as Lapp & Flershem, the above-named plaintiffs, have commenced an action, by summons, for the recovery of money against A. B. Van Norman and Gustave Van Norman, copartners as Axel B. Van Norman & Bro., said defendants, and have made application for a writ of attachment against the property of said defendants, A. B. Van Norman and Gustave Van Norman, in pursuance of the statute in such case made and provided:

Now, therefore, we, Wm. Hamm and R. A. Smith, do undertake, promise, and agree to and with said defendants that the said plaintiffs shall and will pay all costs that may be awarded to said defendants and all damages they may sustain by reason of the said
343 attachment, not exceeding the sum of eight thousand ($8,000) dollars, in case the said defendants, Axel B. Van Norman and Gustave Van Norman, recover judgment in said action.

Dated this 31st day of December, 1883.

WM. HAMM. [SEAL.]
ROBERT A. SMITH. [SEAL.]

Signed, sealed, and delivered in presence of—
C. D. O'BRIEN.
E. A. RINGWALD.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it known that on this 31st day of December, A. D. 1883, before me personally appeared Wm. Hamm and R. A. Smith, to me known to be the same persons described in and who executed the foregoing undertaking, and each for himself acknowledged the same to be his own free act and deed.

[NOTARIAL SEAL.] C. D. O'BRIEN,
Notary Public, Ramsey Co., Minn.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Wm. Hamm and R. A. Smith, the persons named in and who executed the foregoing undertaking, being first duly sworn, doth, each for himself, depose and say that he is a resident and
344 freeholder of the State of Minnesota and worth the amount of sixteen thousand dollars above his debts and liabilities, and exclusive of his property exempt from execution.

WM. HAMM.
ROBERT A. SMITH.

Subscribed and sworn to before me this 31st day of December, A. D. 1883.

[NOTARIAL SEAL.] C. D. O'BRIEN,
Notary Public, Ramsey Co., Minn.

I hereby approve the within undertaking and the sureties therein.

Dated December 31st, A. D. 1883.

R. R. NELSON, *Judge.*

Filed December 31st, 1883.

OSCAR B. HILLIS, *Clerk.*

345 United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners Doing Business under the Firm Name and Style of Lapp & Flershem, Plaintiffs,

against

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under the Firm Name and Style of A. B. Van Norman & Bro., Defendants.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Joseph C. Moreland came personally before me, and, being duly sworn, deposes and says that he is the agent of the plaintiffs in the above-entitled action, which is brought for the recovery of money, and that a summons has been duly issued therein; that a cause of action exists against the defendants and in favor of the plaintiffs therein, and the amount of said plaintiffs' claim therein is three thousand seven hundred seventy-five $\frac{7}{100}$ dollars, and the ground thereof is as follows—that is to say, for goods, wares, and merchandise sold and delivered by the plaintiffs to the defendants, at their special instance and request, at the agreed price of three thousand seven hundred seventy-five and $\frac{7}{100}$ dollars, and which said
346 goods, wares, and merchandise was then and there of the value of three thousand seven hundred seventy-five and $\frac{7}{100}$ dollars, no part of which has ever been paid; and, further, that said indebtedness was fraudulently contracted by said defendants, and

that said defendants have assigned, secreted, and disposed of part of their property with intent to delay and defraud their creditors, and particularly these plaintiffs, and that said defendants are about to assign, secrete, and dispose of the balance of their property with intent to delay and defraud their creditors, and particularly these plaintiffs; and said affiant further deposes and says that said plaintiffs are in danger of losing their said claim by reason of the facts aforesaid, unless a writ of attachment issue, and prays that such writ of attachment may be allowed and issued against the property of said defendants therein, according to the statute in such cases made and provided; that no previous application has been made therein for such order.

And further sayeth not.

JOSEPH C. MORELAND.

Subscribed and sworn to before me on this 31st day of December, A. D. 1883.

[NOTARIAL SEAL.] DANIEL B. VERMILYE,
Notary Public, Ramsey County, Minnesota.

To the clerk of said court:

On filing the within affidavit and a bond approved by
347 me in the within-entitled cause let a writ of attachment issue as within prayed.

Dated December 31st, 1883.

R. R. NELSON,
Judge of said Court.

Filed December 31st, A. D. 1883.

OSCAR B. HILLIS, *Clerk.*

Know all men by these presents that whereas Axel B. Van Norman and Gustave Van Norman, partners as Van Norman & Brother, of Minneapolis, county of Hennepin, Minnesota, are indebted to divers persons in considerable sums of money, and by reason of losses and misfortunes are at present unable to discharge their just debts and liabilities as they mature; and whereas heretofore and within ten days prior to the making of these presents, to wit, on the 31st day of December, 1883, in an action pending in the district court in and for the county of Hennepin, State of Minnesota, wherein John H. Purdy, doing business as J. H. Purdy & Co., is plaintiff, and Axel B. Van Norman & Gustave Van Norman are defendants, there was on said day duly issued a writ of attachment against the property of said defendants, which said writ was duly levied upon the property of said defendants by the sheriff of said Hennepin county; and whereas the property of said defendants is now in the possession of said sheriff by virtue of said writ:

Now, therefore, this indenture, made this 31st day of De-
348 cember, A. D. 1883, between said Axel B. Van Norman and Gustave Van Norman, partners, etc., parties of the first part, and Charles C. Bennett, of Minneapolis, party of the second part, witnesseth: That the parties of the first part, in consideration of the

premises and the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, convey, assign, transfer, and set over, unto the said Charles C. Bennett, party of the second part, his heirs and assigns, all the lands, tenements, hereditaments, and appurtenances, goods, chattels, choses in action, claims, demands, property, and effects of every description belonging to the parties of the first part, wherever the same may be situated, and more particularly a certain stock of jewelry, silver, gold, and jewels of any name and description contained in the store No. 419 Nicollet avenue, city of Minneapolis, county of Hennepin, Minnesota; also the fixtures in the same, except such property as is by law exempt from levy and sale on execution:

To have and to hold the same and every part thereof to said party of the second part, his heirs and assigns, in trust, nevertheless, for the uses and purposes following:

1. To take possession of the said property and to sell and dispose of the same with all reasonable diligence, and to convert the same into money; and also to collect all such debts and demands hereby assigned as may be collectible; and with and out of the proceeds of such sales and collections—

349 2. To pay and discharge all the just and reasonable expenses, costs, and charges of executing this assignment and of carrying into effect the trust hereby created, including the reasonable compensation of the party of the second part for his services in executing the said trust.

3. To pay and discharge in full, if the residue of said proceeds be sufficient for that purpose, all the debts and liabilities now due or to become due from said party of the first part to all their creditors who shall file releases of their debts and claims against the said party of the first part, as by law provided, together with all interest due and to become due thereon; and if the residue of said proceeds shall not be sufficient to pay said debts and liabilities and interest in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest proportionably to their respective amounts, and in accordance with the statute in such case made and provided; and if, after payment of all the costs, charges, and expenses attending the execution of said trust and the payment and discharge in full of all the said lawful debts owing by the said parties of the first part, there shall be any surplus of the proceeds remaining in the hands of the party of the second part, then—

4. To repay such surplus to the parties of the first part, their executors, administrators, or assigns.

And for the more effectual execution of the trusts hereby created the parties of the first part do hereby make, constitute, and appoint the party of the second part their true and lawful attorney irrevocable, with full power and authority to do and perform all acts,

350 deeds, matters, and things which may be necessary to the full execution of said trust, and for the purposes of said

trust to ask, demand, recover, and receive, of and from all and every person and persons, all the property, debts, and demands belonging and owing to the parties of the first part, and to give acquittances for the same; and to sue, prosecute, defend, and implead for the same; and to execute, acknowledge, and deliver all deeds and instruments of conveyance necessary or proper for the better execution of said trust.

In witness whereof said parties of the first part have hereunto set their hands and seals the day and year first above written.

VAN NORMAN & BRO. [SEAL.]
AXEL B. VAN NORMAN. [SEAL.]
GUSTAV VAN NORMAN.

Signed, sealed, and delivered in presence of—
N. P. LILYENGREN.
L. A. MERRICK.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

I, Louis A. Merrick, a notary public within and for said county, do hereby certify that on this thirty-first day of December, A. D. 1883, personally appeared before me Axel B. Van Norman and Gustav Van Norman, to me well known to be the same persons described in and who executed the foregoing instrument, and who
351 acknowledged that they executed the same freely and voluntarily for the uses and purposes therein expressed.

[SEAL.] LOUIS A. MERRICK,
Notary Public, Hennepin Co., Minn.

I, Charles C. Bennett, do hereby accept the trust created by the above instrument and agree faithfully to perform the same. Dated December 18.

CHARLES C. BENNETT.

In presence of—
L. A. MERRICK.
A. N. MERRICK.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

I, Louis A. Merrick, within and for said county, do hereby certify that on this 31st day of December, A. D. 1883, personally appeared before me Charles C. Bennett, to me well known to be the same person described in and who executed the foregoing instrument, and who acknowledged that he executed the same freely and voluntarily for the uses and purposes therein expressed.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

352 STATE OF MINNESOTA, } ss:
County of Hennepin, }

OFFICE CLERK OF DISTRICT COURT.

I hereby certify that the within instrument was filed in this office on the 31st day of December, 1883, at 7 o'clock p. m.

E. J. DAVENPORT,
Clerk of the District Court.

Affidavit.

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

In the Matter of the Assignment of AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Partners under Firm Name of Van Norman & Bro., Insolvent.

HENNEPIN COUNTY, *ss:*

Axel B. Van Norman, first being sworn, on oath deposes and says that he is a member of the firm of Van Norman & Brother, composed of this affiant and Gustav Van Norman; that said firm have made an assignment of all its property not exempt from execution, and sale for the benefit of all the creditors of said firm, and that the property so assigned and transferred to Charles C. Bennett does not exceed in value and amount the sum of nine thousand dollars, and that the property so assigned consists of a stock of jewelry
353 and the fixtures situate in the store at number 419 Nicollet avenue, in the city of Minneapolis, county of Hennepin, and State of Minnesota.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 31st day of December, A. D. 1883.

[SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

Know all men by these presents that we, Charles C. Bennett, as principal, and Louis P. Crevier, Alfred Soderstrom, Gust. Lundell, O. Huglund, John A. Turnquist, Peter N. Mark, and A. J. Rosander, sureties, are held and firmly bound unto the State of Minnesota in the sum of eighteen thousand dollars, lawful money of the United States of America, to be paid to the State of Minnesota; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 31st day of December, one thousand eight hundred and eighty-three.

The condition of the above obligation is such that whereas Axel B. Van Norman and Gustave Van Norman, partners under firm
354 name of Van Norman & Brother, of Minneapolis, in the county of Hennepin, State of Minnesota, have, by instrument in writing

dated the 31st day of December, 1883, assigned all their property not exempt by law from levy and sale on execution to said Charles C. Bennett for the benefit of all the creditors of said Axel B. Van Norman and Gustave Van Norman, without preferences, who shall file releases of their debts and claims against such debtors as provided by said deed of assignment:

Now, therefore, if said Charles C. Bennett shall faithfully and justly perform all the duties of his trust as such assignee and shall perform and abide by all such order as the court may give herein, then the above obligation to be void; otherwise to remain in full force and virtue.

CHARLES C. BENNETT. [SEAL.]
LOUIS P. CREVIER. [SEAL.]
ALFRED SODERSTROM. [SEAL.]
GUST. LUNDELL. [SEAL.]
O. HUGLUND. [SEAL.]
JOHN A. TURNQUIST. [SEAL.]
PETER N. MARK. [SEAL.]
A. J. ROSANDER. [SEAL.]

Sealed and delivered in presence of—
A. N. MERRICK.
L. A. MERRICK. [SEAL.]

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Charles C. Bennett, Louis P. Cravier, Alfred Soderstrom, Gust. Lundell, O. Hagland, John A. Turnquist, Peter M. Marks, A. J. Rosander came personally before me on this 31st day of De-
355 cember, A. D. 1883, to me well known to be the same persons who executed the foregoing bond, and each acknowledged the same to be his own free act and deed.

L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

The above-named persons, being first duly sworn, doth say, each for himself, that he is the same person as the surety above named, and is a resident and freeholder of and in the State of Minnesota, and worth the sum of — dollars, therein stated, above his debts and liabilities and exclusive of his property exempt from execution.

LOUIS P. CRAVIER.
ALFRED SODERSTROM.
GUST. LUNDELL.
O. HAGLAND.
PETER M. MARK.
A. J. ROSANDER.
JOHN A. TURNQUIST.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Louis P. Crevier, being sworn, says that he is the surety
356 above named and is a resident and freeholder of and in the State of Minnesota and worth the sum of two thousand dollars above his debts and liabilities and exclusive of his property exempt from execution.

Alfred Soderstrom, being sworn, says that he is the surety above named; that he is a resident and freeholder of and in the State of Minnesota; that he is worth the sum of two thousand dollars above his debts and liabilities and exclusive of his property exempt from execution.

Gust. Lundell, being sworn, says that he is the security above named; that he is a resident of and freeholder of and in the State of Minnesota and worth the sum of $5,000 exclusive of his property exempt from execution and above his debts and liabilities.

O. Hogland, being sworn, says that he is the surety above named; that he is a resident and freeholder of and in the State of Minnesota and worth the sum of $2,000 above his debts and liabilities and exclusive of his property exempt from execution.

John A. Turnquist, being sworn, says that he is the surety above named; that he is a resident of and freeholder in the State of Minnesota and worth the sum of $2,000 above his debts and liabilities and exclusive of his property exempt from execution.

Peter M. Mark, being sworn, says that he is the surety above named; that he is a resident of and freeholder in the State of Minnesota and worth the sum of $2,500 above his debts and liabilities and exclusive of his property exempt from execution.

A. J. Rosander, being sworn, says that he is the surety above; that he is a resident of and freeholder in the State of Min-
357 nesota and worth the sum of $2,500 above his debts and liabilities and exclusive of his property exempt from execution.

Subscribed and sworn to before — this 31st day of December, 1883.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

I hereby approve the within bond and sureties therein named.

Dated December 31st, 1883.

A. H. YOUNG,
Judge of the District Court.
E. J. DAVENPORT, *Clerk.*

Description of Property.

STATE OF MINNESOTA, *County of Hennepin*:

District Court.

In the Matter of AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Partners as Van Norman & Brother, Insolvents.

All of the stock of goods, consisting of jewelry, gold and silver watches, clocks and plated ware, furniture and fixtures, situate on the 31st day of December, 1883, in the store at number 419 Nicollet avenue, city of Minneapolis, of the total value of about nine thousand dollars.

358 *Statement of Particulars.*

That said stock and all of it was taken forcibly from the possession of the assignee on the 31st day of December, 1883, by H. R. Denny, United States marshal for the district of Minnesota, and for that reason affiant is unable to give a more particular description of said property.

Estimated value, $9,000.

Dated January 9th, 1884.

AXEL B. VAN NORMAN.

STATE OF MINNESOTA, *County of Hennepin*, } ss:

Axel B. Van Norman, one of the within-named insolvents, being first duly sworn, says that the within schedule is a true and correct statement of the property and effects of the said Axel B. Van Norman and Gustave Van Norman, partners under firm name of Van Norman & Bro., on the 9th day of Jan., 1884.

[NOTARIAL SEAL.] J. J. HIRSCH,
Notary Public, Hennepin County, Minn.

STATE OF MINNESOTA, *County of Hennepin:*

District Court.

In the Matter of AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners as Van Norman and Brother, Insolvents.

Names of creditors.	Residences.	Amount.	When and where contracted.	Nature and consideration.	How received.
W. B. Clapp, Bro. & Co.	Chicago, Ill.	$3,744 81	Chicago, September 8, 1883	Goods, wares, and merchandise	
Lapp & Flershem	Chicago, Ill.	700 00	Chicago, September 8, 1883	" " "	
Lapp & Flershem	Chicago, Ill.	2,500 00	Minneapolis, December, 1883	" " "	
Lapp & Flershem	Chicago, Ill.	500 00	Minneapolis, December, 1883	" " "	
John H. Purdy	Chicago, Ill.	525 00	Chicago, September 8, 1883	" " "	
Stein & Ellogan	Chicago, Ill.	515 00	Chicago, September 8, 1883	" " "	
A. J. Warner & Co.	Minneapolis, Minn.	500 00	Minneapolis, October 15, 1883	" " "	
Carter, Sloan & Co.	New York city	420 00	Minneapolis, October 27, 1883	" " "	
J. Herzog	New York city	645 00	Minneapolis, October 24, 1883	" " "	
H. Oppenheimer & Co.	Chicago, Ill.	405 00	Minneapolis, October 27, 1883	" " "	
Weskeming Bros.	Cincinnati, Ohio	200 00	Minneapolis, October 19, 1883	" " "	
Faulkner & Oppenheimer	New York city	968 00	Minneapolis, December 1, 1883	" " "	
A. Morse & Son	Chicago, Ill.	140 00	Minneapolis, November 8, 1883	" " "	
A. Hirsh & Co.	Chicago, Ill.	500 00	Minneapolis, October 15, 1883	" " "	
C. Preusser & Brothers	Milwaukee, Wis.	700 00	Minneapolis, October 26, 1883	" " "	
C. Rossway & Son	New York city	296 00	Minneapolis, November 12, 1883	" " "	
Edward Todd & Co.	New York city	203 00	Minneapolis, November 14, 1883	" " "	
J. W. Tufts	Boston, Mass.	600 00	Minneapolis, November 7, 1883	" " "	
Black & Co.	Detroit, Mich.	161 00	Minneapolis, December 1, 1883	" " "	
J. Foley	New York city	225 00	Minneapolis, November 30, 1883	" " "	
Greenbury, Goodman & Pollock	New York city	454 00	Minneapolis, December 3, 1883	" " "	
M. J. Effenstein & Co.	Chicago, Ill.	400 00	Minneapolis, December 25, 1883	" " "	
B. Allen & Co.	Chicago, Ill.	300 00	Minneapolis, December 22, 1883	" " "	
Otto Young & Co.	Chicago, Ill.	52 00	Minneapolis, December 24, 1883	" " "	
Carl Van Norman	Tuskona, Sweden	1,000 00	Winnepeg, December, 1883	" " "	
J. B. Liljengrin	Minneapolis, Minn.	100 00	Minneapolis, December, 1883	" " "	
Gale & Co.	Minneapolis, Minn.	45 00	Minneapolis, November, 1883	" " "	

Dated Minneapolis, Minnesota, Jan. 9, 1884.

AXEL B. VAN NORMAN.

361 STATE OF MINNESOTA, } ss:
County of Hennepin, }

District Court, 4th Judicial District.

Axel B. Van Norman, being first duly sworn, says that the within schedule is a true and correct statement of the debts and liabilities of the said Axel B. Van Norman and Gustav Van Norman, partners as Van Norman & Brother, insolvents within named, and that he is one of said insolvents owing by said Van Norman and Brother on the 31st day of December, 1884.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 9th day of January, 1884.
[NOTARIAL SEAL.] J. J. HIRSCH,
Notary Public, Hennepin Co., Minn.

362 *Clerk's Certificate.*

STATE OF MINNESOTA, *County of Hennepin:*

District Court, Fourth Judicial District.

In the Matter of the Assignment of AXEL B. VAN NORMAN and GUSTAV VAN NORMAN, Partners as Van Norman Bros., to Charles C. Bennett.

I, E. J. Davenport, clerk of the above-named court, do hereby certify that I have compared the paper writing to which this certificate is attached with the original deed of assignment, affidavit of Axel B. Van Norman, bond of assignee, schedule of property and schedule of debts, in the above-entitled matter, as the same appears of record and on file in the said clerk's office at the court-house, in said Hennepin county, Minnesota, and find the same to be a true and correct copy thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Minneapolis, this 12th day of January, A. D. 1884.

[District Court Seal.]

E. J. DAVENPORT, *Clerk,*
By C. B. TIRRELL, *Deputy.*

363 (Endorsed:) Filed January 21, 1884. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA:

United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners Doing Business under Firm Name and Style of Lapp & Flershem, Plaintiffs,

vs.

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under Firm Name and Style of A. B. Van Norman & Bro., Defendants.

On reading the affidavits of Charles C. Bennett, Axel B. Van Nor-

man, Gustave Van Norman, and J. H. Bryant it is ordered that upon said affidavits and upon all the files in the above-entitled cause on file in the office of the clerk of this court, the above-named plaintiffs show cause, before the undersigned, at the court-room, in the United States custom-house, in the city of St. Paul, Min-
364 nesota, on the 14th day of January, 1884, at 10 o'clock in the forenoon of said day, why, upon the grounds and for the reasons stated in said affidavits and upon the grounds following—

1st. That said attachment by said United States marshal was levied while part of said property so taken by said United States marshal was in the possession of said Charles C. Bennett, assignee, duly appointed and qualified under the laws of the State of Minnesota.

2d. That said attachment so levied by said United States marshal upon said property was so levied and said property taken by said United States marshal while the same, to wit, all the property of Van Norman and Brother, was in the possession of Charles C. Bennett, the duly appointed and qualified assignee, under the laws of the State of Minnesota, of said Van Norman and Brother.

3d. That subsequent to and within ten days after the levying of said attachment in above cause by said United States marshal, said defendants, Axel B. Van Norman and Gustave Van Norman, partners under firm name of Van Norman & Brother, made and executed an assignment to Charles C. Bennett of all their property not exempt by law for the equal benefit of all their creditors; that said Charles C. Bennett duly qualified and accepted said trust, in accordance with the laws of the State of Minnesota, and is legally entitled to have said attachment dissolved and the custody of said property restored to him.

Therefore let said plaintiff show cause why said Charles C. Bennett, assignee aforesaid, should not be permitted to intervene
365 in said action and become a party defendant, and why said attachment, upon the grounds and for the reason before stated, should not be dissolved, vacated, and held for naught and said property restored to said Charles C. Bennett, the legal custodian thereof; and let a copy of this order be served on Messrs. O'Brien & Wilson, attorneys for said plaintiffs, at least two days before the said time of hearing upon this order.

R. R. NELSON, *Judge.*

366 UNITED STATES OF AMERICA:

United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners Doing Business under the Firm Name and Style of Lapp & Flershem, Plaintiffs,

vs.

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under the Firm Name of A. B. Van Norman and Brother, Defendants.

STATE OF MINNESOTA, } ss:
Hennepin County, }

Charles C. Bennett, first being duly sworn, on his oath deposes and says that he is a resident and citizen of the city of Minneapolis, county of Hennepin, State of Minnesota; that he has been and is acquainted with Axel B. Van Norman and Gustave Van Norman, partners, and formerly doing business under the firm name and style of Van Norman and Brother, at number 419 Nicollet avenue, in said city of Minneapolis, defendants above named, and who were engaged in the manufacture and sale of jewelry in said city of Minneapolis; that on the 31st day of December, A. D. 1883, the
367 stock of goods, consisting of gold and silver, jewelry, watches, clocks, and plated ware, together with all the fixtures and furniture of every kind and description, the property of the defendants above named, was duly levied upon by James Stoddart, the sheriff of Hennepin county, said State of Minnesota, under and by virtue of a writ of attachment regularly issued out of the district court, fourth judicial district, held in and for said county of Hennepin and State of Minnesota, upon an action regularly commenced in said district court, in which John H. Purdy, doing business in the name of J. H. Purdy & Co., was plaintiff, and the said Axel B. Van Norman and Gustave Van Norman, partners as Van Norman and Brother, were the defendants; that after the said James Stoddart, as sheriff of said Hennepin county, had so levied upon all of the stock, fixtures, and furniture so owned by the said Axel B. Van Norman and Gustave Van Norman, partners as Van Norman and Brother, situate as aforesaid at number 419 Nicollet avenue, in said city of Minneapolis, and while the said Stoddart was in the legal and undisputed possession of the same on the said 31st day of December, A. D. 1883, the said Axel B. Van Norman and Gustave Van Norman, partners under the firm name of Van Norman and Brother, made an assignment in writing for the equal benefit of all their creditors, pursuant to the provisions of the General Statutes of Minnesota and of chapter 148 General Laws of Minnesota, year 1881, duly assigning all of their property of every name and description, credits and choses in action, and more particularly a certain stock of jewelry, fixtures, and furniture situate at number 419 Nicollet avenue,
368 in said city of Minneapolis, to this affiant; that this affiant, on said 31st day of December, A. D. 1883, duly accepted said

trust by instrument in writing duly acknowledged; that said assignment and acceptance of said trust, which were regular and in all respects in accordance with the laws of said State of Minnesota, was duly and regularly filed in the office of the clerk of said district court on the said 31st day of December, A. D. 1883; that thereupon said Axel B. Van Norman, one of said assignors and one of the above-named defendants, made his affidavit, duly verified, in which he stated that said property so assigned did not exceed in value the sum of nine thousand dollars; that thereupon and on the said 31st day of December, A. D. 1883, this affiant made and executed a bond of the sum of eighteen thousand dollars in double the value of the property so assigned, with good and sufficient sureties, as required by laws of the State of Minnesota, to the State of Minnesota, conditional for the faithful performance of the duties of such trust, which bond, so made and executed as required by the laws of the State of Minnesota, and in all respects regular, was, on the said 31st day of December, A. D. 1883, duly approved in writing by the Hon. A. H. Young, one of the judges of the district court of the fourth judicial district in and for the county of Hennepin, State of Minnesota, which said bond and affidavit of Axel B. Van Norman were, on the 2d day of January, A. D. 1884, duly and regularly filed in the office of the clerk of said district court, as required by law; that after the making of said assignment by the said Axel B. Van Norman and
369 Gustave Van Norman, partners as aforesaid under the firm name of Van Norman and Brother, and the acceptance of said trust in writing by this affiant, and the making of said affidavit by said Axel B. Van Norman, and the making and execution of said bond by this affiant, and the approval of the same by said district court, and affiant being in all respects duly and regularly qualified and justly entitled as such assignee to the possession of all the property and estate not exempt by law for the equal benefit of all the creditors of the said Axel B. Van Norman and Gustave Van Norman, partners as aforesaid under the firm name of Van Norman and Brother, this affiant did, on the 31st day of December, A. D. 1883, enter the store of said Axel B. Van Norman and Gustave Van Norman, partners under firm name of Van Norman and Brother, at number 419 Nicollet avenue, in said city of Minneapolis, county of Hennepin, and State of Minnesota, where was then situate all of the property and estate so assigned to this affiant by the said Van Norman and Brother for the equal benefit of all the creditors of said Van Norman and Brother, and this affiant did then and there demand of said James Stoddart, sheriff of said Hennepin county, and then in possession of all the property, effects, goods, furniture, and fixtures in said store, as such sheriff, and holding the same under said writ of attachment issued out of said district court in favor of John H. Purdy, doing business under firm name of J. H. Purdy & Co. and against the said Van Norman and Brother, the possession of all such property, and that in obedience to said demand said James Stoddart, sheriff of said Hennepin county, did then and there deliver to
370 this affiant all of said stock, furniture, and fixtures, and effects of every name and description in said store number 419 Nicol-

let avenue, being the late property of said Axel B. Van Norman and Gustave Van Norman, partners under the firm name of Van Norman and Brother, and this affiant did then and there, as such assignee, take possession of said store, with all the stock, goods, wares, furniture, and fixtures therein situate, and all the property so held by the said Stoddart as sheriff, and affiant was then and there, on the said 31st day of December, A. D. 1883, in the full possession of the same, and then and there affiant notified all persons present that he was in the sole and exclusive possession of all of said stock, furniture, and fixtures, as such assignee, and warned all persons not to interfere with him in the possession of said property, and justly and legally entitled to the same; that while affiant was in the possession of all of said stock, goods, jewelry, furniture, and fixtures then in said store, number 419 Nicollet avenue, in the city of Minneapolis, the said goods, jewelry, furniture, and fixtures were forcibly and with a strong hand taken, against the protest of this affiant, from the possession of this affiant by one H. R. Denny, United States marshal for the district of Minnesota.

That said H. R. Denny then and there forcibly expelled this affiant from said store and from the possession of said property, and took said property into the possession of himself, the said H. R. Denny, as United States marshal, under and by virtue of a writ of attachment issued out of the United States circuit court in the above-entitled action.

371 Wherefore this affiant asks and prays the court for leave to intervene and become a party defendant herein; that an order to show cause be granted, ordering and requiring said plaintiffs to appear and show cause, if any they have, before your honor, at a day and hour therein to be named, why this affiant should not be permitted to intervene and become a party defendant in said action, and why said attachment, issued out of this court in said action, should not be dissolved and vacated and held for naught and said property so held by said H. R. Denny, as United States marshal, under said attachment, restored at once to this affiant, the duly qualified assignee and lawful custodian of the same; and further affiant sayeth not.

CHARLES C. BENNETT.

Subscribed and sworn to before me this 7th day of January, 1884.

[NOTARIAL SEAL.] F. B. DODGE,
Notary Public, Hennepin County, Minn.

372 UNITED STATES OF AMERICA:

United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners Doing Business under the Firm Name and Style of Lapp & Flersham, Plaintiffs,

against

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under the Firm Name of A. B. Van Norman & Bro., Defendants.

STATE OF MINNESOTA, } *Hennepin County,* } *ss:*

Axel B. Van Norman, first being duly sworn, on oath deposes and says that he is a resident and citizen of the city of Minneapolis, Hennepin county, and State of Minnesota, and a member of the firm of Van Norman & Brother, composed of this affiant and Gustave Van Norman, defendants in the above-entitled action; that he is acquainted with and knows Peter Lapp and Lemuel W. Flurshem, copartners and doing business under the firm name and style of Lapp & Flershem, and plaintiffs in the above-entitled action; that the said firm of Van Norman & Brother commenced
373 business in said city of Minneapolis as jewelers, in the sale and manufacture of the same, on or about the 1st day of September, 1883; that the said firm of Van Norman & Brother purchased a bill of goods of the above-named plaintiffs on or about the 8th day of September, A. D. 1883, amounting in all *the* the sum of $850, of which $250 has been paid, upon four months' credit; that subsequently and on or about the 18th day of December, A. D. 1883, said firm of Van Norman & Brother purchased of said plaintiffs another bill of goods, amounting in all to the sum of $2,500, upon four months' credit, and this affiant denies, positively and specifically, that said indebtedness or any part or portion of the same was fraudulently contracted, or that any misrepresentations were made or inducements held out to said plaintiffs to sell said goods to the firm of Van Norman & Brother, which were not absolutely true, and denies each of the allegations and statements in the affidavit of H. D. Moreland as untrue and without any foundation in truth, and affiant says that said statements and each and every one of them so contained in the said affidavit of said H. D. Moreland are absolutely and unqualifiedly false, said affidavit of H. D. Moreland being the affidavit upon which the attachment — said cause was issued, and avers the truth to be that said firm of Van Norman & Brother purchased said goods of said plaintiffs in good faith and with the firm belief at that time that said firm of A. B. Van Norman & Brother would be able to pay for the same when said indebtedness became due; denies that said firm of Van Norman & Brother have assigned, secreted, or disposed of any part or
374 portion of their property with intent to delay and defraud their creditors or any of them, and avers that all of the

goods or property owned and belonging to said firm of Van Norman & Brother, which has been disposed of and sold, has been disposed of and sold in the usual and ordinary course of business, and in no other way, and this affiant denies that said firm of Van Norman & Brother have at any time disposed of or secreted any part or portion of the said property, or that they have ever at any time disposed or sold any part or portion of said property, except in the ordinary course of business, and denies that said firm ever assigned any part or portion of their property except as provided by law and for the equal benefit of all their creditors; and this affiant states and shows to the court that the said firm of Van Norman & Brother, being unable to pay all of their indebtedness in full, and all of their property having been attached on the 31st day of December, A. D. 1883, and taken possessson of by James Stoddart, sheriff of Hennepin county, and State of Minnesota, upon a writ of attachment duly issued out of the district court of the fourth judicial district in and for said Hennepin county and State of Minnesota, in favor of John H. Purdy, doing business as J. H. Purdy & Co., and against this affiant and Gustave Van Norman, doing business under the firm name of Van Norman & Brother, upon an action regularly commenced in said district court by the said John H. Purdy against the said firm of Van Norman & Brother, did on the said 31st day of December, A. D. 1883, assign, in accordance with the law of the State of Minnesota, all of their prop-
375 erty and estate, and particularly the stock of jewelry, gold and silver watches, clocks, fixtures, and furniture, there situate and being at number 419 Nicollet avenue, in said city of Minneapolis, to one Charles C. Bennett, who accepted said trust in writing and duly qualified, by giving a good and sufficient bond, as required by the laws of said State of Minnesota, which bond was duly approved, and that said Charles C. Bennett entered upon the discharge of his dnties as such assignee, and took possession of all of said property so situated and located at number 419 Nicollet avenue, from the possession of which he was, on the said 31st day of December, 1883, forcibly expelled by H. R. Denny, United States marshal, and his deputies, and that said Bennett is now illegally deprived of the possession of said property, and this affiant says that the said H. R. Denny was notified and informed that the firm of Van Norman & Brother had duly assigned all of their property and estate to the said Charles C. Bennett, and that the said Denny and his deputies, as also said plaintiffs, well knew at the time they seized said property that the same had been assigned by the firm of Van Norman & Brother to the said Bennet for the equal benefit of all the creditors of said firm of Van Norman & Brother; and this affiant further says that at the time of the issuing of said writ of attachment out of said United States circuit court none of the indebtedness mentioned in the affidavit of said H. D. Moreland was then due, and that no part of said indebtedness is yet due; wherefore this affiant asks and prays the court that an order to show cause be granted ordering and requiring said plaintiffs to appear and show cause, if any they
376 have, before your honor, at a day and hour therein to be

named, why said attachment issued out of this court in said action should not be dissolved and vacated and held for naught and said property so held by said H. R. Denny, as United States marshal, under said attachment restored at once to Charles C. Bennett, the duly qualified assignee and lawful custodian of the same; and further affiant saith not.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me the 7th day of January, A. D. 1884.

[NOTARIAL SEAL.] A. W. WORTHINGTON,
Notary Public, Hennepin County, Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Gustave Van Norman, being first duly sworn, on oath says that he is one of the defendants in the above-entitled action; that defendants purchased goods of plaintiffs as mentioned in the affidavit for attachment herein; that defendants or affiant did not make any false or fraudulent statements, either at the time of the sale of said goods or at any other time, to plaintiffs or any one else to induce the sale of said goods; that affiant or said defendants have not at any time or place disposed —, secreted, assigned, or concealed any part of their goods, and have disposed of none except in the ordinary course of business.

377 That said defendants did not intend to assign, secrete, or dispose of any of their said goods with intent to hinder, delay, and defraud their creditors, but that on the 31st day of December, 1883, there was an attachment on their goods issued out of the district court for said Hennepin county, and that said defendants, believing it for the best interests of all their creditors, made an assignment to Charles C. Bennett of all their property for the equal benefit of all their creditors; that all of said statements in the affidavit of H. D. Moreland are absolutely false and untrue.

GUSTAVE VAN NORMAN.

Subscribed and sworn to before me this 7th day of January, 1884.

[NOTARIAL SEAL.] A. W. WORTHINGTON,
Notary Public, Hennepin County, Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

J. H. Bryant, being first duly sworn, on oath says that he is a resident of the city of Minneapolis, said Hennepin county and State of Minnesota; that he knows A. B. Van Norman and Gustave Van Norman, partners under the firm name of Van Norman & Brother; that this affiant went into the employ of Van Norman & Brother on or about the 14th of October, A. D. 1883, at the store of said

Van Norman & Brother, at 419 Nicollet avenue, in said
378 city of Minneapolis, as clock and watch maker; that he is well acquainted with the way in which the said Van Norman & Brother conducted their business in the store; that this affiant remained in the constant employment of the said Van Norman & Brother until the 31st day of December, A. D. 1883; that during all of said period that this affiant saw no goods or property of any kind taken from said store save and except in the ordinary course of business, and this affiant knows nothing of any property being taken or removed from said store save and except in the ordinary and usual course of business.

J. H. BRYANT.

Subscribed and sworn to before me this 8th day of January, 1884.

[NOTARIAL SEAL.] C. G. VANWERT,
Notary Public, Minn.

(Indorsed:) Filed Jan. 12th, 1884. Oscar B. Hillis, clerk.

379 STATE OF MINNESOTA, } ss:
Hennepin County, }

United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHAM, Copartners Doing Business under the Firm Name of Lapp & Flershem, Plaintiffs,

against

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Copartners Doing Business under the Firm Name of A. B. Van Norman & Bro., Defendants.

A. N. Merrick, first being duly sworn, on oath deposes and says that he is a resident and citizen of the city of Minneapolis, Hennepin county and State of Minnesota; that he is an attorney and member of the law firm of Merrick & Merrick, composed of this affiant and L. A. Merrick; that affiant knows Axel B. Van Norman and Gustave Van Norman, partners as Van Norman and Brother, and formerly engaged in the jewelry business at number 419 Nicollet avenue, in said city of Minneapolis; that on or about the 24th day of December, 1883, this affiant was spoken to by Axel B. Van Norman and Brother with reference to an action commenced against said firm by W. B. Clapp & Co., of Chicago, in the district court for said Hennepin county for some four thousand dollars on
the 21st day of December, A. D. 1883, and affiant was
380 then informed that said firm of A. B. Van Norman & Brother could not meet their liabilities as they became due, and asked this affiant's advice as to the proper course to be pursued in the premises; that this affiant then and there advised said Axel B. Van Norman that it would not be safe or just to his other creditors to let the said firm of Clapp & Co. take judgment upon their claim; that it was the duty of Van Norman and Brother to allow no preferences and

to treat all creditors alike; that if they had creditors in Minneapolis it would be a good plan to consult with such as to what course should be pursued so as to protect the rights of all the creditors; that the said Axel B. Van Norman then stated that said firm of Van Norman and Brother was owing Warner & Co., of Minneapolis, some $500.00, and asked affiant to see said Warner & Co., which affiant did; that after consultation with said firm affiant advised Van Norman and Brother to seek a compromise with all of their creditors; that a schedule of the assets of said firm should be furnished, as also a list of creditors, and then ascertain what percentage could be paid; that Van Norman and Brother assented to this, and did furnish a schedule of assets and list of creditors, which said schedule and list of creditors affiant took to said Warner & Co. with the understanding that Van Norman and Brother would attempt to pay 40 per cent., part in cash and the balance in 6 and 9 months' time; that Messrs. Warner & Co. thought it would be better to offer 50 per cent., and this was finally acquiesced in by Van Norman
381 and Brother; that affiant was requested by said Van Norman and Brother to go to Chicago and see the larger creditors with reference to the proposed composition, to which affiant assented, and, after notifying Mr. F. B. Dodge, attorney for W. B. Clapp & Co., of what was proposed, did go to Chicago, and, not succeeding, returned to Minneapolis on the 30th of December, 1883; that on the 31st day of December, 1883, affiant's firm received a claim against Van Norman and Brother from J. H. Purdy with instructions to commence an action and attach all of the property of said Van Norman and Brother upon the ground that said firm was about to convey away their property with intent to hinder, delay, and defraud their creditors, and to hold all of said property under said attachment for the benefit of all the creditors of said Van Norman and Brother; that said action was commenced in favor of J. H. Purdy & Co. on the 31st day of December, 1883, as directed, and said attachment obtained upon the information so conveyed to this affiant and without any understanding or agreement of any kind with the said Van Norman and Brother; that the writ of attachment was placed in the hands of the sheriff of said Hennepin county about noon of the said 31st day of December, 1883, with instructions to levy upon and attach all of the stock, goods, fixtures, etc., in the store number 419 Nicollet avenue, in the said city of Minneapolis; that the sheriff of Hennepin county did levy upon and take into his possession said store, stock of goods, and fixtures, as directed, about noon of the said 31st day of December, 1883; that about 3 o'clock in the afternoon of said 31st day of December, 1883, Axel B. Van Norman, of the said firm of Van Norman and Brother,
382 came to the office of Merrick & Merrick and stated that said firm of Van Norman and Brother had concluded to make an assignment of all their property for the equal benefit of all their creditors, and asked that a deed of assignment be drawn at once so assigning all of their property to Charles C. Bennett, which was accordingly done.

And this affiant further says that, so far as affiant knows and be-

lieves, every step taken by the firm of Van Norman and Brother to adjust their indebtedness and protect their creditors and have them share alike was in good faith; that this affiant advised Van Norman and Brother that it would be the duty of said firm to assign their property in the event of its being attached or levied upon in order to prevent unjust preferences and protect all of their creditors; that affiant, when first spoken to by Van Norman and Brother in reference to their financial condition, told them explicitly that they must not sell or dispose of any of their property, except in the ordinary and usual course of business, and that so far as affiant or the firm of Merrick and Merrick are concerned everything done or proposed to be done has been open and without any concealment or the slightest desire to conceal anything, and with only one object in view, and that to save all the property possible for the equal benefit of all the creditors of Van Norman and Brother.

And affiant further says that he went into the store number 419 Nicollet avenue about 7 o'clock of the evening of December 31st, 1883, with Charles C. Bennett, and was present when said
383 Bennett informed the sheriff of said Hennepin county that Van Norman & Brother had made an assignment to him of all their property for the equal benefit of all their creditors, and that he had accepted said trust and given bond in the sum of $18,000, which had been approved by Hon. A. H. Young, judge of the district court for said Hennepin county, and demanded that the possession of said store, stock of goods, fixtures, and all of the property belonging to Van Norman & Brother be turned over to him (Bennett); that the sheriff of said Hennepin county did then and there turn over to said Charles C. Bennett and place in the manual possession of said Bennett certain watches and also all of the property in said store, together with the possession of said store, and gave to said Bennett a key to the door of said store, and that said sheriff claimed at this time to be in full possession of all of said property in said store, and that when this affiant left said store said Bennett was in said store in possession and claiming to be in possession of all of the property of Van Norman & Brother as their duly qualified assignee, and justly and legally entitled to the same.

And further affiant saith not.

A. N. MERRICK.

Subscribed and sworn to before me this 19th day of January, 1884.

[NOTARIAL SEAL.] J. J. HIRSCH,
Notary Public, Hennepin Co., Minn.

384 STATE OF MINNESOTA, } ss:
County of Hennepin, }

L. A. Merrick, first being duly sworn, on oath says that he is a member of the firm of Merrick & Merrick; that he knows defendants in the above action; that on the 31st day of December, 1883, at about twelve noon, affiant placed in the hands of John Peterson, deputy sheriff of the county of Hennepin, Minnesota, a writ of at-

tachment, issued out of the district court of said State of Minnesota in and for said Hennepin county, in an action wherein John H. Purdy was plaintiff and these defendants were defendants, against the property of the defendants in this action; that affiant proceeded, with said deputy sheriff, to the store of said Van Norman & Brother, 419 Nicollet avenue, in said city; that said deputy sheriff and affiant entered said store, and thereupon affiant directed said deputy sheriff to levy on all the stock, furniture, and fixtures in said store and to take possession of said store and lock the door; that said deputy sheriff obeyed said instructions, and did, at about half past twelve o'clock noon of the 31st day of December, 1883, attach, under and by virtue of said writ of attachment, and take into his possession all the stock, furniture, and fixtures and the store number 419 Nicollet avenue, and did lock the door of said store, and announced that he (said deputy sheriff) was in possession of everything in said store and of said store under and by virtue of said writ of attachment, and did cover the windows with paper; that affiant then left said store and returned about five o'clock p. m. of the same day
385 and found one Gus. J. Hopping inside said store, and was informed by said deputy sheriff that said Hopping, who claimed to be a United States deputy marshal for the district of Minnesota, had entered said store without the permission of said deputy sheriff, but that he (said deputy sheriff) was still in sole and exclusive possession of all of said stock, furniture, and fixtures and said store under said writ of attachment; that affiant then left said store; that between 3 and 4 o'clock p. m. of said day affiant, at the request of Axel B. Van Norman and Gustave Van Norman, drew a deed of assignment from said Van Normans to Charles C. Bennett of all their property not exempt from levy for the equal benefit of all their creditors, which was duly signed and acknowledged by said Van Normans on said 31st day of December, 1883; that said trust was duly accepted on the same day by said Charles C. Bennett in writing, and said assignment filed in the office of the clerk of the district — in and for said Hennepin county on said 31st day of December, 1883; that on the same day said Bennett made and executed to the State of Minnesota a bond in the sum of $18,000.00 for the discharge of the duties of such trust, which bond was, about 15 minutes after 7 o'clock p. m. of said day, approved in writing by Hon. A. H. Young, judge of the district court for said Hennepin county; that affiant returned to the store of defendants with A. N. Merrick and said Bennett about half past seven o'clock in the evening of said day, and found said Peterson (deputy sheriff) in the manual possession of certain watches; that said deputy sheriff informed affiant "that said Hopping, acting under a writ of attachment in this cause, would only allow him to levy on said watches; that he (Peterson) pro-
586 tested, and claimed to take possession of everything, but that said Hopping, by threats, prevented him from taking into his manual possession anything except watches;" that said Bennett then exhibited to said Peterson his bond as assignee, duly approved, and demanded of said Peterson the possession of the said property and all of it; whereupon said Peterson delivered to said

Bennett, as such assignee, the manual possession of said watches, and also of all the property in said store, together with the possession of the said store and the key of the same; whereupon said Bennett made proclamation of his possession as such assignee; that immediately thereafter said Hopping took said watches above mentioned from the manual possession of said Bennett, and claimed to levy on the same under a writ of attachment in above cause; that affiant has read the affidavit of Alva L. Roe, and remembers the conversation between said Roe, A. N. Merrick, and affiant; that neither said A. N. Merrick nor affiant stated to said Roe that the writ of attachment in the Purdy action was for the purpose of enabling defendants to make an assignment, and was an amicable suit.

That the claim of J. H. Purdy was received in the office of Merrick & Merrick on the 31st day of December, 1883, with instructions to make an attachment of all the property of defendants, and thereafter to do what was best to protect the interests of all the creditors.

That the firm of Merrick & Merrick had no understanding with Van Norman & Brother with reference to said claim of J.
387 H. Purdy, implied or otherwise, as to the course to be pursued by Van Norman & Brother.

And further affiant saith not.

L. A. MERRICK.

Subscribed and sworn to before me this 19th day of January, 1884.

[NOTARIAL SEAL.] J. J. HIRSCH,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Axel B. Van Norman, first being duly sworn, on oath makes this his supplemental affidavit, and states that at the time of the seizure of their goods, fixtures, furniture, etc., belonging to this affiant and Gustave Van Norman, partners as Van Norman & Brother, on the 31st day of December, 1883, by the sheriff of Hennepin county, said stock of goods, furniture, and fixtures and all of the property then situate in the store number 419 Nicollet avenue was of the reasonable value of $9,000 at cost prices.

That this affiant has read the affidavit of one E. A. Ringwald, in which it is stated that on the 29th day of December, 1883, said Ringwald offered to extend the time for the payment of plaintiff's claim, provided that Van Norman & Brother would secure the same, and that this affiant rejected said offer; and this affiant now states the truth with reference to said conversation; that this affiant said that the firm of Van Norman & Brother could
388 as he verily believed, pay every dollar of their indebtedness, provided that all of their creditors would give them an extension; that said firm could give no security for the payment of their indebtedness, and as an action had been commenced against them by W. B. Clapp & Co., Chicago, for some $4,000, that said firm would get judgment against them, unless a settlement was

made; and that this affiant had been advised by his attorneys that it was best for Van Norman & Brother to seek a compromise with all their creditors upon a fair and just basis; and that in accordance with such advice and after preparing a schedule of the assets of said firm, as also a list of creditors, and after consultation with Messrs. Warner & Co., creditors, of Minneapolis, this affiant placed said schedule of assets and list of creditors in the hands of A. N. Merrick, and requested him to see the creditors of said firm and offer fifty cents on a dollar, part cash and balance on time; and this affiant was informed that if the proposed compromise should fail, that then it would be the duty of said firm to make an assignment for the equal benefit of all their creditors and to prevent unjust and illegal preferences; and this affiant denies having stated to the said Ringwald that he had already chosen a person for assignee; and this affiant further states that at no time prior to the 21st day of December, 1883, did E. A. Ringwald, H. D. Moreland, E. S. Gorman, or any person acting as either agent or attorney for said plaintiffs, make any claim or even intimate or represent to this affiant,
389 or said firm of Van Norman & Brother, that any of the stock of goods of said firm had been secreted, concealed, sold, or disposed of with intent to cheat and defraud plaintiffs or any of their creditors, or that the said firm of Van Norman and Brother had made to said plaintiffs any false or fraudulent representations as to their assets, or held out any inducements to said plaintiffs to sell said goods to Van Norman and Brother, which were not true; and this affiant states that all of the goods and property of said Van Norman and Brother was in the store, where any and all of the agents and attorneys of plaintiffs could see and examine the same; that the said Moreland wanted this affiant to turn out to him goods to the amount and value of plaintiffs' claim, which affiant declined to do.

And this affiant further states that the claim of J. H. Purdy was a good and valid claim, and was past due on the 31st day of December, A. D. 1883; that this affiant had no understanding or agreement with the said Purdy or his attorneys with reference to said attachment, and that the attachment and suit of the said J. H. Purdy was of his own direction and without the solicitation, knowledge, or consent of this affiant; that the action of W. B. Clapp & Co. against Van Norman and Brother was commenced on the 21st day of December, A. D. 1883.

And this affiant further states that when it became evident that said firm of Van Norman and Brother could not meet all of their liabilities as they matured they made no concealment of it, and when suit was commenced by Clapp & Co. they communicated the fact to Messrs. Warner & Co., creditors, Minneapolis; showed
390 said firm the schedule of assets and a list of creditors, and when it was determined to ask a compromise with their creditors, caused F. B. Dodge, Esq., attorney for Clapp & Co., to be notified just what was proposed to do in the premises, and that everything, from the commencement to the present time, has been open and without any concealment, and that the assignment was made

in good faith, in accordance with law, and for the purpose of protecting the rights of all the creditors of said firm and to prevent illegal preferences.

And this affiant further states that he was absent from the store at the time the sheriff of said Hennepin county levied upon and took into his possession store, goods, furniture, and fixtures in the same, and that when he returned to the same, which was about 2 o'clock of the afternoon of the said 31st day of December, 1883, said sheriff had the door locked and papers put upon the glass part of the front door and was there alone in the possession of said store.

And further affiant saith not.

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 19th day of January, 1884.

[NOTARIAL SEAL.] J. J. HIRSCH,
Notary Public, Hennepin County, Minn.

Filed January 21st, 1884.

OSCAR B. HILLIS, *Clerk.*

391 DISTRICT OF MINNESOTA, *ss:*

United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners as Lapp & Flershem,

vs.

AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Partners as A. B. Van Norman & Bro.

N. A. Halmberg, being duly sworn, says that he is a resident and citizen of the city of Minneapolis, Hennepin county, and State of Minnesota; that he is well acquainted with Axel B. Van Norman and Gustave Van Norman, partners as Van Norman and Brother; that he remembers distinctly the time said Van Norman and Brother commenced business at number 419 Nicollet avenue, in the said city of Minneapolis; that this affiant was in the store of said Van Norman and Brother almost daily from the first of September, 1883, up to the day said store was closed, on the 31st day of December, 1883; that this affiant saw all of the goods in said store as they appeared in the show-cases and upon the shelves; that this affiant was in said store on Saturday, the 29th day of December, 1883, and again on Monday, the 31st day of December, 1883, about eleven o'clock in the forenoon of said day; that this affiant noticed no change whatever in the condition of said store on Monday, the 31st day
392 of December, 1883, from what it was on the 29th day of said December, 1883, and that the condition of the goods remained the same; and this affiant further says that if there have been any considerable amount of goods taken from said store he could readily have noticed it; that he was well acquainted with and knew the different kinds of goods in the store of Van Norman and Brother.

And further this affiant saith not.

N. A. HOLMBERG.

Subscribed and sworn to before me this 25th day January, A. D. 1884.

[NOTARIAL SEAL.] HENRY J. FLETCHER,
Notary Public, Hennepin County, Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Gustave Van Norman, being first sworn, on oath says that he was in the store of Van Norman & Brother during the entire day of Saturday, the 29th day of December, 1883, and also during the evening of said day, with the exception when absent for meals, and again on Monday, the 31st day of December, 1883, from early in the morning of said day until the time when the sheriff took possession of the stock of goods and store of Van Norman & Brother, about noon of said day, and that no goods of any kind were taken from said store except as sold and delivered in the ordinary
393 and usual way, and that the stock of goods remained the same at the time it was attached by the sheriff as it was on the Saturday preceding; that there had been no change, except what might be occasioned by the usual and ordinary sale,

GUSTAVE VAN NORMAN.

Subscribed and sworn to before me this 26th day of January, A. D. 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Emanuel Van Norman, being duly sworn, on oath says that he is a resident and citizen of the city of Minneapolis, said Hennepin county, and State of Minnesota; that he is a brother of Axel B. Van Norman and Gustave Van Norman, of said city of Minneapolis; that this affiant was in the employ of Van Norman & Brother from some time about the 1st of September, 1883, to the time the store and goods of said Van Norman & Brother was seized and taken possession of on the 31st day of December, A. D. 1883; that this affiant was in the store of said Van Norman & Brother all day on the 29th day of December, 1883, and the following Monday (December 31st) up to noon of said day, and that no goods or stock of any kind was taken from said store or disposed of, except in the ordinary
394 and usual course of trade and business, and that there was no change in the condition of said stock of goods in said store from Saturday, the 28th day of December, 1883, up to the time when said store was closed and taken possession of by the sheriff of said Hennepin county, noon, December 31st, 1883, except such as would ordinarily occur from the ordinary and usual sales in the ordinary and usual trade; and this affiant further says that no goods of any kind have been taken from said store at any time, save in the ordinary and usual course of trade and business.

EMANUEL VAN NORMAN.

Subscribed and sworn to before — this 26th day of January, A. D. 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin County, Minn.

395 STATE OF MINNESOTA, } ss:
County of Hennepin, }

United States Circuit Court, District of Minnesota.

PETER LAPP and LEMUEL W. FLERSHEM, Copartners and Doing Business under the Firm Name of Lapp & Flershem, Plaintiffs,
vs.
AXEL B. VAN NORMAN and GUSTAVE VAN NORMAN, Partners as A. B. Van Norman and Brother, Defendants.

A. N. Merrick, first being duly sworn, on oath makes this his supplemental affidavit, and says that he has heard read the affidavit of one Peter Lapp, and in answer to the same says that on the 28th day of December, A. D. 1883, he went to the store of Messrs. Lapp & Flershem, in the city of Chicago, for the purpose of conferring with Mr. Flershem in reference to the financial condition of Van Norman & Brother; that Mr. W. B. Clapp, of the firm of Clapp & Co., had arranged with Mr. Flershem that this affiant should meet Mr. Flershem at the store of Lapp & Flershem at precisely 3 o'clock of the afternoon of December 28th, 1883; that, in accordance with such arrangement, this affiant did go to the store of Messrs. Lapp & Fler-
396 shem at the time appointed; that Mr. Flershem was not there; that this affiant saw Mr. Peter Lapp and had a short conversation with him, in which he (Lapp) excused the absence of his partner by saying that he had gone to attend a jewelers' association; that this affiant then asked him when Mr. Flershem would be in, and was told at about 5 o'clock; that this affiant then gave Mr. Lapp his name and spoke of his business; that he then very promptly said that he had nothing whatever to do with the credit or financial department of the house; that he knew nothing whatever in reference to Van Norman & Brother; that he had sole charge of the stock and Mr. Flershem managed the financial department; that the goods which Van Norman & Brother had purchased were bought from their agent at St. Paul, with the exception of some few hundred dollars' worth, which were purchased from the house direct; that during the conversation, which was very brief, this affiant stated to Mr. Lapp that unless a compromise was effected with the creditors Van Norman & Brother would be compelled to make an assignment in order to protect their creditors, and that if they now delayed to pursue such a course and the stock sacrificed at a forced sale the creditors would not in all probability receive a very large percentage, and this affiant went away then and returned again the same afternoon to the store of Lapp & Flershem, once before 5 o'clock, at 5 o'clock, and once after 5 o'clock, but that he did not find Mr. Flershem there or have any conversation with him.

397 And this affiant further says that he has read the affidavit of one Alva L. Roe, and states that so far as the statement of what purports to have been said by either this affiant or L. A. Merrick, at the office of Merrick & Merrick, on the 9th day of January, 1884, is entirely incorrect; that this affiant did not state, nor was such statement made, in the presence of said Roe, that the attachment suit of J. H. Purdy was a friendly suit and made for the purpose of permitting Van Norman & Brother to make an assignment; that this affiant did state upon information that he believed that there was at the time of such attachment some $9,000 or, perhaps, $10,000 worth of goods, furniture, and fixtures, and still so believes, and that the assignee had given a bond upon the basis that there was at least $9,000 worth of property so assigned.

And this affiant avers that so far as the action of J. H. Purdy against Van Norman & Brother is concerned, that it was in good faith and without any understanding with Van Norman & Brother; that neither A. B. or Gustave Van Norman or C. C. Bennett knew that J. H. Purdy was about to make an attachment.

A. N. MERRICK.

Subscribed and sworn to before me this 28th day of January, 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

398 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Axel B. Van Norman, first being duly sworn, on oath makes this his supplemental affidavit, and says that he has heard read the affidavit of one T. B. Myers as to the present value of the goods now held by the United States marshal; that this affiant, in connection with C. C. Bennett, made a schedule of the stock and fixtures in the store of Van Norman & Brother, 419 Nicollet avenue, city of Minneapolis, on the 24th day of December, 1883; that the estimate so placed by this affiant and the said Bennett, on the said 24th day of December, 1883, upon said stock of goods, furniture, and fixtures, taken at less than cost price, was $10,518.60; that this estimate and schedule did not embrace some of the small and cheaper goods; that this affiant is pretty well informed as to what goods were in the store on Saturday, the 24th day of December, 1883, as also on the 31st day of December, 1883; that since the seizure of said goods by the sheriff, December 31st, 1883, this affiant, in connection with C. C. Bennet, has made a careful estimate of the goods, furniture, and fixtures in said store at the time of said attachment, which is as follows:

Clocks	$500 00
Silver-ware	450 00
All watches (except three fine gold)	1,500 00
Three fine gold watches—$275, $125, $275	675 00
Ladies' sets	800 00

399	Furniture and fixtures of every kind	1,500 00
	Rings, gents' and ladies'	500 00
	Chains	450 00
	Gents' chains, gold and silver and rolled-plate	350 00
	Ladies' chains	300 00
	Opera glasses	250 00
	Diamond rings	425 00
	One regulator	150 00
	Bracelets	400 00
	Scarf pins	150 00
	Spectacles	100 00
	Gold pens and pen-holders	150 00
	Gold sleeve buttons, rolled plate and collar	250 00
	Loose diamonds	500 00
	Book accounts	350 00
	Masonic pins and studs	200 00
	Jewelry cases	75 00
	Gold and silver thimbles	18 00
	Optical goods	30 00

That the above does not embrace every article, but is a fair estimate, based upon cost prices; that at the time the marshal seized the goods and fixtures and took the watches from C. C. Bennett the assignee, there was a valuable safe worth at least $550.00 in the store, upon which there was owing $300; that this affiant is informed and so states that the United States marshal, after levying upon said safe, turned the same over to M. A. Biglford, agent of the Hall's Safe and Lock Company, and that said valuable safe has, through the act of said marshal, disappeared from the assets belonging to the creditors of Van Norman & Brother.

400 And affiant further says that he has heard read the affidavit of L. W. Flershem, and particularly that part of said affidavit wherein it is claimed that this affiant told said Flershem that he (affiant) was worth $10,000.00 over and above all his liabilities, and that he (affiant) had $4,000.00 in cash, and that he had paid all debts out of that sum; that the same is incorrect and untrue in this regard; that, instead of so stating to said Flershem, affiant told him (Flershem) "that they had about $3,500.00 in cash and about the same amount in stock and tools; that they had paid an old debt of about $200.00 to Clapp & Co., and about $1,000.00 for goods then purchased;" and this affiant made no other or different statement to said Flershem or anybody else.

That affiant has heard read the affidavit of one Peter Lapp, and particularly that portion in which said Lapp claims that this affiant, on the 8th day of September, 1883, stated to him (Lapp) "that he had $4,000.00 cash on hand, and, with his (affiant's) stock, tools, and fixtures, was worth $10,000.00 over and above all liabilities; that he owed about $2,000.00 for merchandise, and had paid that since arriving in Chicago, and had also paid $1,000.00 on purchases just made;" and that the same is false in very many particulars; that affiant did state the following: "That they had about $3,500.00 in

cash, and that their stock and tools was worth about as much more; that they owed about $200.00 to Clapp & Co., which they had paid since his arrival in Chicago; and also had paid $1,000.00 to Clapp & Co. on purchases just made."

401 This affiant further says that he heard read the affidavit of one J. C. Moreland, and particularly that portion in which it is claimed that this affiant stated to the said Moreland, on the 5th day of December, 1883, "that the firm of Van Norman & Brother were carrying a stock of the value of 20,000.00," and that the said statement of said Moreland is untrue; that nothing was said about the value of the stock; that said stock was one where it could be and was seen by the said Moreland; that affiant did not at said or any other time tell said Moreland "that it made no difference whether he (Moreland) sold them the goods or not, as they had funds amply sufficient to pay for the same."

AXEL B. VAN NORMAN.

Subscribed and sworn to before me this 29th day of January, 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin County, Minn.

STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Charles C. Bennett, first being duly sworn, on oath saith that on about the 24th day of December, 1883, at the request of Van Norman & Brother, affiant made a schedule of the stock of goods then in the store of Van Norman & Brother, 419 Nicollet avenue, as also the furniture and fixtures, and placed a valuation upon the same;

402 that estimating the same at a low figure, considerably less than the cost price, and not estimating at all some of the small and cheaper articles, made the then reasonable and fair value of the same, $10,518.60; that this affiant was in the store of Van Norman & Brother on the 29th day of December, 1883, saw the stock of goods, and again on the 31st day of December, 1883, prior to the closing of said store by the sheriff of Hennepin county, and this affiant saw no change in the stock on the 31st day of December, 1883, from what it was on the 29th day of December, 1883, and this affiant is of the opinion that there was in stock, furniture, and fixtures at the time the sheriff of said Hennepin county took possession of the same at least $10,000 worth of property at cost prices; that this affiant has made an estimate of the property and value of the same in the store at the time one Gus. Hopping took the possession of the same from this affiant, which is as follows:

Clocks	$500 00
Silver-ware	450 00
All watches (except 3 fine gold)	1,500 00
Three fine gold watches, $275, $125, and $275	675 00
Ladies' sets	800 00
Furniture and fixtures of every kind	1,500 00
Rings—gents' and ladies'	500 00

Charms		450 00
Gents' chains—gold and silver and rolled-plate		350 00
Ladies' chains		300 00
Opera glasses		250 00
	Diamond rings	425 00
403	One regulator	150 00
	Bracelets	400 00
Scarf pins		150 00
Spectacles		100 00
Gold pens and pen-holders		150 00
Gold sleeve buttons and rolled plate and collar		250 00
Loose diamonds		500 00
Book accounts		350 00
Masonic pins and studs		200 00
Jewelry cases		75 00
Gold and silver thimbles		18 00
Optical goods		30 00

And further affiant saith not.

CHARLES C. BENNET.

Subscribed and sworn to before me this 29th day of January, 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

John Peterson, being duly sworn, on oath saith that he was, on the 31st day of December, 1883, ever since has been, and now is a deputy sheriff of the county of Hennepin, Minnesota.

That about 12 o'clock noon of the 31st day of December,
404 1883, affiant received a writ of attachment, duly issued out of the district court for said Hennepin county in an action wherein John H. Purdy was plaintiff and Axel B. Van Norman and Gustave Van Norman, partners as Van Norman & Brother, were defendants, against said defendants.

That affiant, accompanied by L. A. Merrick, one of the plaintiff's attorneys in said action, forthwith proceeded to the store of said Van Normans, arriving there about half past twelve, noon, of said day; that affiant entered said store and took possession of the same and all the contents under and by virtue of said writ of attachment, locked the door, covered the glass front of said store with papers, and announced in a loud tone of voice that he (affiant) was in the sole and exclusive possession of said store and contents under and by virtue of said writ of attachment.

That affiant remained in the sole, exclusive, undisturbed, and peaceable possession of said store and all its contents, under and by virtue of said writ of attachment, until about a quarter past four o'clock in the afternoon of said day, when one Gus. S. Hopping obtained an

entrance into said store without the consent of affiant; that said Hopping then and there claimed to be a United States deputy marshal, acting under a writ of attachment issued out of the above court in the above-entitled action; that said Hopping proceeded to attach said store and contents, save and except said certain watches which said Hopping allowed this affiant to take; that affiant protested against said Hopping's course then, and telling said Hopping that his (affiant's) instructions were to attach said store and
405 all its contents, which he (affiant) had done; that at the time said Hopping entered said store he was accompanied by E. A. Ringwald and J. C. Moreland and C. D. O'Brien; that affiant remained in said store in the possession of the same and all its contents, and particularly in the manual possession of certain watches described in the return of affiant in said action, until about half past seven o'clock in the evening of said day, when one Charles C. Bennett entered said store, accompanied by A. N. Merrick, and said Bennett presented to affiant a bond in the sum of $18,000 for the faithful discharge of the duties of such trust as assignee of said Van Norman & Brother, approved by Hon. A. H. Young, judge of the district court; that said Bennett then and there announced that he was the duly appointed and qualified assignee of said Van Normans, and demanded of affiant the possession of said store and all its contents; that affiant, as required by law, delivered into the manual possession of said Bennett the watches above mentioned, and also the possession of the said store and all its contents, together with the key to the door of said store; that said Bennett then and there announced that he was in the possession of said store and all its contents as the duly appointed and qualified assignee of said Van Normans; that affiant thereupon left said store, leaving said Bennett in the quiet possession of the same and its contents.

That affiant has read the affidavit of Gus. J. Hopping, and particularly commencing with the 26th line of page 1 of said affidavit and ending with line 7, page 2, of said affidavit; that said
406 statements between said lines are unqualifiedly false and untrue; that, on the contrary, affiant claimed at all times to be in the possession of said store and all its contents under and by virtue of said writ of attachment issued out of the State court.

That at the time affiant entered said store the show-cases in the same seemed to be full, and affiant could detect no vacancies in said stock.

JOHN PETERSON.

Subscribed and sworn to before me this 28th day of January, 1884.

[NOTARIAL SEAL.] L. A. MERRICK,
Notary Public, Hennepin Co., Minn.

Filed Jan. 29, 1884.

OSCAR B. HILLIS, *Clerk.*

407 *Brief for the United States Circuit Court, District of Minnesota.*

PETER LAPP *et al.*, Plaintiffs,

vs.

AXEL VAN NORMAN *et al.*, Defendants.

Brief on part of C. C. Bennett, assignee of above-named defendants, upon motion to dissolve the attachment in said cause.

The principal question upon which it is asked that authorities be furnished is this—

Does a provision in a deed of assignment under consideration providing for the payment of the assignees of the surplus remaining after a distribution provided for under the law render such assignment null and void? That this is an important question, not only in a legal view, but as affecting large amounts of property and the rights and interests of very many creditors in this State, will not be denied.

First. We assume that the insolvent law of 1881 is constitutional, and that it has been so declared, not only by this court, but by the supreme court of this State.

Mather *vs.* Nesbit, 13 Federal Reporter, 872.
Weston *vs.* Loyhed, 30 Minn., 222.
Wendell *vs.* Lebon, 30 Minn., 234.

408 Second. The law in its essential features is a bankrupt law and a very stringent one.

Third. The assignment is not only unobjectionable in form, but is in strict accordance with the law of 1881. It is an assignment by defendants of all their property and estate not exempt by law for the equal benefit of all their creditors, in proportion to their respective valid claims, who shall file releases of their debts and claims against such debtors.

Section 1, act 1881.

The insolvent act is for the sole and exclusive benefit of such creditors as shall file releases to the debtor of all claims, other than such as may be paid under and by virtue of the provisions of the act, section 1 of the act, as also

Section 10, and Wendall *vs.* Lebon, 30 Minn., 234.

Section 10 of the insolvent act of 1881 provides in very plain language:

"No creditors of any insolvent debtor shall receive any benefit under the provisions of this act or any payment of any share of the proceeds of the debtor's estate, unless he shall have first filed with the clerk of the district court, in consideration of the benefits of the provisions of the act, a release to the debtor," etc.

Fourth. The clause in the assignment providing that the
409 surplus (if any), after paying such creditors as shall have filed releases, shall be paid to the assignees, does not render the assignment void.

(*a.*) Such a provision is only a declaration of the legal effect of an assignment under the act of 1881.

Conklin *vs.* Carson, 11 Ills., 503.
Finlay *vs.* Dickenson, 29 Ill., 9.

(*b.*) It was but the declaration of a resulting trust which the law would raise had it not been inserted.

Cross *vs.* Bryant, 2 Scam., 36.

(*c.*) It does not invalidate the assignment, as creditors not filing releases can pursue their remedy against the property of the debtors, either in their hands or those of the assignee.

New Albany & S. R. R. Co. *vs.* Huff, 19 Ind., 444.
McFarland *vs.* Birdsall, 14 Ind., 126.
Kneeland *vs.* Cowles, 4 Chand. (Wis.), 4.

(*d.*) The reservation to the assignors of the surplus, after paying all such creditors as shall file releases, as provided for under the act of 1881, is not fraudulent, and does not in any manner invalidate the assignment, for it is no more than what the law would imply.

Morgan *vs.* Bogue, 7 Neb., 432.
Bigelow *vs.* Skinner, 40 Mo., 195.
Richard *vs.* Levin, 16 Mo., 596.
Johnson *vs.* McAllister, 30 Mo., 327.
Bergin *vs.* Bergin, 1 Iredell (Law), 453.
410 Eli *vs.* Hair, 16 B. Monroe (Ken.), 270.
Bailey *vs.* Hills, 27 Tex., 434.
Livingston *vs.* Bell, 3 Watts, 198.
Mechanics' Bank *vs.* Gorman, 8 Watts & Son, 304.
Skipworth *vs.* Cunningham, 8 Leigh, 271.
Phippin *vs.* Durham, 8 Grat., 457.
Miller *vs.* Stetson, 32 Ala., 162.
Hindman *vs.* Dill & Co., 1 Ala., 639.
Brown *vs.* Lyon, 17 *Id.*, 659.
McCall *vs.* Hinckley, 4 Gill., 128.

Fifth. The defendants, as partners and individually, assigned all their property of every kind under the law.

(*a.*) The deed of assignment is executed by the firm and in the firm name, and also by each member of said firm individually.

(*b.*) The schedules (copies of which are before the court) show that all of the property belonged to the firm.

(*c.*) The list of creditors (also before the court) shows no indebtedness, except upon the part of the firm.

Sixth. That in reference to the claim of plaintiffs that there was collusion between J. H. Purdy, attaching creditor, and defendants, there is not the slightest basis for any such claim.

(*a.*) The affidavit of A. B. Van Norman shows that defend-
411 ants knew nothing of any such attachment until it was made, and they had no understanding whatever with Purdy or any one else.

(*b.*) The affidavit of A. N. Merrick shows distinctly and unequivo-

cally that there was no understanding or arrangement, implied or otherwise, between Purdy and Van Norman, and that the affidavit of Alvah L. Roe as to what was said in the office of Merrick & Merrick was wholly incorrect.

(c.) The affidavit of L. A. Merrick shows that there was no understanding, implied or otherwise, between Merrick & Merrick, acting as attorneys in bringing suit for J. H. Purdy against defendant, and the defendants, and that the action of Purdy was commenced as requested, upon his written order and request and without defendants' knowledge and consent.

Seventh. The court will bear in mind that the assignment was not made and filed until some three hours after levy of the attachment by the plaintiffs in this case.

We submit that none of the points attempted to be made by the plaintiff are well taken. The court will not try a question of fraud (if there be any such question in the case) upon affidavits. No complaint has been filed setting up fraud in the assignment, and it is now too late to allow such a proceeding; but we submit that upon the affidavits no foundation has been made for allowing a bill to be filed attacking the assignment on the ground of fraud or collusion.

412 There is only one question really at issue, and that is whether the plaintiffs in this case should obtain through this court what they have denied in the State courts, viz., an unlawful preference over the other creditors.

We submit the questions involved to the decision of the court.

MERRICK & MERRICK,
F. HOOKER,
ROGERS & ROGERS,
LANE & DODGE, AND
NATHAN COHN,
Attorneys for Assignee.

Filed February 5, 1884.

OSCAR B. HILLIS, *Clerk.*

United States Circuit Court for the District of Minnesota.

Term Minutes, December Term, A. D. 1883, February 18th, 1884.

PETER LAPP *et al. vs.* AXEL B. VAN NORMAN.

413 The application and motion of Charles C. Bennett, assignee, praying leave to intervene in this action and become a party defendant herein, and moving the court to dissolve, vacate, and set aside the attachment heretofore made herein, having been heretofore fully heard upon the affidavits and reargruments of the attorneys for the respective parties and by the court taken under advisement:

Now the court, after due consideration thereof and being fully advised in the premises, files its written opinion concerning the same.

Pursuant thereto it is by the court ordered as follows: First, that Charles C. Bennett, assignee, do have, and he is hereby given, leave

to intervene and become a party defendant herein; second, that the motion to dissolve the attachment be, and the same is hereby, denied.

UNITED STATES OF AMERICA, *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that the foregoing is a true copy of the bill of complaint, answer, undertaking for attachment, affidavit for attachment, deed of assignment, affidavit of Axel B. Van Norman, bond of assignee, schedule of property and of debts in reassignment of Van Norman & Bro., order to show cause why attachment should not be dissolved, also affidavits therefor, affidavits of the defendants and the assignee on the order to show cause, defendant's affidavits on order to show cause, assignee's brief on
414 motion to dissolve attachment, and order allowing Chas. C. Bennett, assignee, leave to intervene, and motion dissolving attachment in the cause therein named as fully as the same appears of record in my office.

Witness my hand as clerk and the seal of said court. Done at office in St. Paul, Minnesota, this 8th day of December, A. D. 1884.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

To Merrick & Merrick, attorneys for plaintiff:

You will please take notice that the within and foregoing, together with the pleadings in said cause, is hereby proposed as and for the proposed case in the within-entitled action, and you are notified to serve upon the undersigned, within ten days from the date of service hereof, any amendments you may desire to insert therein.

O'BRIEN & WILSON,
Attorneys for Defendant, St. Paul, Minn.

Service of the within and foregoing proposed case is hereby admitted this 23d day of December, 1884.

MERRICK & MERRICK,
Attorneys for Plaintiff.

415 This case is correct, with extended exceptions on part of plaintiff put in, and, with proceedings in case, is satisfactory, and case may be signed by court.

MERRICK & MERRICK,
Plaintiffs' Attorneys.

The foregoing comprises all the evidence and proceedings, and is allowed as the settled case.

January 9th, 1885.

HASCAL R. BRILL, *Judge.*

Settled case filed March 4, 1885.

R. W. BELL, *Clerk.*

It was verbally stipulated in the foregoing-entitled action that the

defendants' motion for a new trial in said cause might be brought on for hearing before the district court in and for the county of Ramsey and State of Minnesota, without notice, and might be heard upon the following grounds, to wit:

First. On the ground that the verdict is not justified by the evidence and is contrary to law.

Second. Errors in law occurring at the trial and excepted to by the defendants.

416 STATE OF MINNESOTA, *County of Ramsey:*

District Court.

CHARLES C. BENNETT, Assignee, &c., Plaintiff,

vs.

H. R. DENNY, Defendant.

After hearing counsel, ordered that defendant's motion for a new trial is denied.

January 13, 1885.

H. R. BRILL, *Judge.*

(Endorsed:) Filed January 13, 1885.

STATE OF MINNESOTA, *County of Ramsey:*

District Court, Second Judicial District.

CHARLES C. BENNET, as Assignee of Axel B. Van Norman and Gustave Van Norman, Partners as A. B. Van Norman & Brother, Plaintiffs,

vs.

H. R. DENNY, Defendant.

417 You will please take notice that the defendant appeals to the supreme court of the State of Minnesota from the order of this court in this action entered on the 12th day of January, 1885, denying defendant's motion for a new trial in said cause.

Dated January 16, 1885.

C. D. O'BRIEN,
Attorney for Defendant, St. Paul, Minn.

To Merrick & Merrick, attorneys for plaintiff, and R. W. Bell, clerk of the district court.

(Endorsed:) Due service of the within admitted this 17th day of January, 1885. Merrick & Merrick, attorneys for plaintiff. R. W. Bell, clerk of court. Filed January 19, 1885. R. W. Bell, clerk.

418 *Undertaking to Stay Proceedings on Appeal from Order.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

District Court, 2d Judicial District.

CHARLES C. BENNETT, as Assignee of A. B. Van Norman & Brother, Plaintiffs,
against
H. R. DENNY, Defendant.

Whereas an order was entered in the above-entitled action in the district court of the county of Ramsey on the 12th day of January, 1885, denying defendant's motion for a new trial in said cause, heretofore duly made therein; and whereas the said defendant, feeling aggrieved thereby, desires to appeal therefrom to the supreme court of this State:

Now, therefore, we, Robert A. Smith and William Dawson, of St. Paul, Minn., do undertake and bind ourselves in the sum of six thousand dollars that the said appellant, H. R. Denny, shall pay the costs of said appeal and the damages sustained by the respondent in consequence thereof if said order or any part thereof is affirmed or said appeal dismissed, and shall abide and satisfy the judg-
419 ment or order which the appellate court may give therein.

Dated this 17th day of January, 1885.

ROBERT A. SMITH. [SEAL.]
WILLIAM DAWSON. [SEAL.]

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Robert A. Smith and William Dawson, of St. Paul, Minn., the sureties named in the within undertaking, being severally sworn, each for himself says that he is a resident and freeholder of said State and is worth the sum of twelve thousand dollars over and above his just debts and liabilities and exclusive of property exempt from execution.

ROBERT A. SMITH.
WILLIAM DAWSON.

Subscribed and sworn to before me on this 17th day of January, A. D. 1885.

E. S. GORMAN,
Notary Public, Minn.

(Indorsed:) Undertaking to stay proceedings on appeal from order. Due service of the within admitted January 17, 1885. Merrick & Merrick, pl'ffs' att'ys. I hereby approve the within undertaking and sureties thereon. Hascal R. Brill, district judge. January
420 17, '85. Filed January 19th, 1885. R. W. Bell, clerk. C. D. O'Brien, attorney for appellant, St. Paul, Minn.

STATE OF MINNESOTA, *County of Ramsey.*

District Court.

CHARLES C. BENNETT, as Assignee, &c., *vs.* H. R. DENNY.

I, R. W. Bell, clerk of the district court in and for said county of Ramsey, do hereby certify and return to the supreme court of the State of Minnesota that the foregoing contains true and correct copies of the pleadings in said cause entitled the settled case filed in said cause, the order denying defendant's motion for a new trial, notice of appeal, and the undertaking on appeal, and that the same and all of the same are still on file in my said office.

Dated at St. Paul, Minnesota, this 24th day of March, 1885.

[Seal District Court, Ramsey Co., attached.]

R. W. BELL,
Clerk of the District Court, Ramsey Co., Minn.

421 Endorsed: No. 4116. State of Minnesota, supreme court. April term, 1885. Chas. C. Bennett, as assignee, &c., respondent, *vs.* H. R. Denny, appellant. Return on appeal. Filed M'ch 26th, 1885. Sam. H. Nichols, clerk. C. D. O'Brien, att'y for appellant.

422 STATE OF MINNESOTA:

Supreme Court.

CHARLES C. BENNETT, as Assignee, &c., &c., Respondent,
v.
H. R. DENNY, Appellant.

Sam'l H. Nichols, Esq., clerk of the said court:

Please place above cause on April term, 1885, calendar, with Merrick & Merrick, attorneys for respondent, C. D. O'Brien, attorney for appellant, and oblige—

Yours truly,
C. D. O'BRIEN.
Att'y for Appellant.

M'ch 27th, 1885.

Endorsed: Note of issue. Filed M'ch 28th, 1885. Sam. H. Nichols, clerk.

423 STATE OF MINNESOTA:

Supreme Court. General April Term, A. D. 1885.

CHAS. C. BENNETT, as Assignee of Axel B. Van Norman, *et al.*, Respondents,
vs.
H. R. DENNY, Appellant.
} No. 80. 4116.

JUNE 2ND, A. D. 1885—Tuesday morning, 9.30 o'clock.

Court convened pursuant to adjournment, all the justices being present except Associate Justice Vanderburgh.

This cause came on to be heard this day upon the return to the

appeal herein. Thereupon the same was argued by counsel for the respective parties, submitted to the court for decision, and taken under advisement.

A true record.

Attest: SAM. H. NICHOLS, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

[Seal Supreme Court Minnesota attached.]

Attest: SAM. H. NICHOLS, *Clerk.*

Indorsed: State of Minnesota. Supreme court. Chas. C. Bennett, assignee, &c., respondent, *vs.* H. R. Denny, appellant. Copy of minutes of argument. Filed July 18th, A. D. 1885. Sam. H. Nichols, clerk.

424 *Syllabus.*

Supreme Court. April Term, 1885.

CHAS. C. BENNETT, as Assignee of Axel B. Van Norman and Gustav Van Norman and Brother, Respondents,

v.

H. R. DENNY, Appellant.

In re Mann, 32 Minn., 60, and Simon and Wolf *v.* Mann, U. S., Apr. Tr., 1885, adhered to and followed.

An assignment under our insolvent law is not invalidated by the fraud of the assignee.

The attachment of the property of the debtor assignor gives the district court jurisdiction of the assignment, a jurisdiction which cannot be attacked collaterally (if it can in any way) by showing that the attachment was collusive or fraudulent.

425 Prior to the making of an *an* assignment, but on the day when it was made, the defendant, as United States marshal, by virtue of process of the circuit court against the assignor, attached the assigned property; the assignee made application to the circuit court to be permitted to intervene in the action in which the attachment issued and to become a party defendant therein, and for the dissolution of the attachment. Leave to intervene and become a party defendant was granted, but the motion to dissolve the attachment was denied.

Held, that such denial does not bar or prevent the assignee from proceeding against the marshal as for the conversion of the assigned property though the attachment remains undissolved.

426 *Opinion.*

Supreme Court, April Term, 1885.

CHAS. C. BENNETT, as Assignee of Axel B. Van Norman and Gustave Van Norman and Brother, Respondents,

vs.

H. R. DENNY, Appellant.

The holding of this court, *In re* Mann, 32 Minn., 60, that an assignment under our insolvent law is not invalidated by the fraudulent intent of the assignor, has recently been followed and sanctioned in Simon & Wolf *v.* Mann, Ass'r, to 1885, and we see no occasion to re-examine it.

In the case at bar fraud is charged upon the assignee, as well as the assignor, and in that particular the defendant claims that it differs from *In re* Mann, but we agree with the trial court
427 that the difference is unimportant, and that the principle of *In re* Mann is applicable to fraud of the assignee also. The considerations presented in the opinion in that case, except such as relate to the criminal or penal liability of the assignor, are entirely applicable to fraud of the assignee, and, in addition to what is there said, it is to be observed that by section 9 of the insolvent law the court in which the assignment may be said to be pending is authorized, "for any proper cause," to remove an assignee and appoint another in his stead, and is required to order a removal upon the vote of two-thirds in number and amount of the creditors. This provision appears to be based upon the idea that the assignment may be made to an incompetent, dishonest, or otherwise unfit
428 assignee, and that, nevertheless, the assignment shall stand and the property be distributed among the creditors under it.

It is also said that this case is distinguished from *In re* Mann by the fact that here the attachment upon which the assignment was based was collusive and fraudulent.

Whether there is any way in which fraud in such an attachment can be taken advantage of to upset an assignment we need not now inquire. Certainly the attachment gives the district court jurisdiction of the assignment, and that jurisdiction cannot be attacked collaterally, as is attempted to be done in this instance.

It remains to consider the effect of the action of the Federal circuit court.

It seems that prior to the making of the assignment in
429 question the defendant, as United States marshal, by virtue of process of the circuit court, had attached the assigned property.

The plaintiff, the assignee, made application to the circuit court to be permitted to intervene in the action in which the attachment issued and to become a party defendant therein, and for the dissolution of the attachment. Upon a hearing leave to intervene and become a defendant was granted, but the motion to dissolve the attachment was denied.

It is contended by defendant, if we understand him, that the order refusing to dissolve the attachment was a species of judgment in favor of his right to hold the goods attached under the writ of attachment, and that the plaintiff, having become a party to the proceedings in the circuit court, cannot proceed against the mar-
430 shal for the conversion of the assigned property while the attachment is undissolved.

This contention overestimates the force and effect of the order refusing to dissolve an attachment. It was merely "the decision of a motion or summary application," which "is not to be regarded in the light of *res adjudicata* or as so far conclusive upon the parties as to prevent their drawing the same matters in question again in the more regular form of an action."

Kanne *v.* M. & St. L. R'y Co., Apr. Tr., 1885.

It was a decision not upon a right of property, but upon the question whether upon the facts before the court an attachment should be dissolved. By becoming a party defendant to the suit in the circuit court the plaintiff probably put himself in a position
431 to contest the existence of the cause of action which was the subject of that suit; but that subject was not whether the attachment was valid and proper or not or where the right of property in the attached goods was. These questions he was at entire liberty to raise and litigate in any other proper tribunal.

So far as we are able to discern these views are in entire harmony with Buck *v.* Collath, 3 Wall., 334, relied upon by defendant.

Order denying new trial affirmed.

BERRY, *J.*

(Indorsed:) Opinion and syllabus. Filed July 8th, 1885. Sam. H. Nichols, clerk. April term, 1885. Berry, J.

432 STATE OF MINNESOTA:

Supreme Court. April Term, A. D. 1885.

CHAS. C. BENNETT, as Assignee of Axel B. Van Norman and Gustave Van Norman, Respondents,
v.
H. R. DENNY, Appellant. } No. 80.

Appeal from district court, second judicial district, county of Ramsey.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1885, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the order of the court below denying a new trial herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered July 8th, A. D. 1885.

By the court.

Attest: SAM. H. NICHOLS, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: [SEAL.] SAM. H. NICHOLS, *Clerk.*

Indorsed: No. —. State of Minnesota, supreme court. Chas. C. Bennett, assignee, &c., respondent-, *v.* H. R. Denny, appellant. Copy of order for judgment. Filed July 18th, A. D. 1885. Sam. H. Nichols, clerk. Entered on page 77, Book E.

433 *Affidavit of Disbursements on Trial and Notice of Taxation of Costs.*

STATE OF MINNESOTA:

Supreme Court.

CHARLES C. BENNETT, as Assignee of Axel B. Van Norman and Gustave Van Norman, Partners as Van Norman and Brother, Respondents,

against

H. R. DENNY, Appellant.

Costs and disbursements.

Statute costs	$25 00

Disbursements.

One affidavit	25
Clerk's fees (to be taxed)	10 00
Printer's fees for printing respondents' brief	8 10
	$43 35

I hereby allow and tax the within costs and disbursements in favor of respondents at $43.35 this 18th day of July, 1885.

Attest: SAM. H. NICHOLS, *Clerk.*

STATE OF MINNESOTA, *County of Hennepin:*

A. N. Merrick, being duly sworn, says that he is one of the respondents' attorneys in the above-entitled action; that the
434 foregoing bill and items of disbursements therein are just and correct and have been necessarily paid or incurred therein.

A. N. MERRICK.

Subscribed and sworn to before me on this 16th day of July, 1885.

[Notarial Seal Hennepin Co., Minn., attached.]

L. A. MERRICK,
Notary Public, Hennepin County, Minn.

(Indorsed.)

To C. D. O'Brien, Esq., attorney for appellant, St. Paul, Minn.

DEAR SIR: Please take notice that on the 18th day of July, A. D. 1885, at 11 o'clock a. m., application will be made to S. H.

Nichols, clerk of said court, at his office in the capitol in the city of St. Paul, Ramsey county, Minnesota, to have the foregoing items of costs and disbursements taxed and inserted in the judgment to be entered herein.

Dated July 16th, 1885.

Yours respectfully, MERRICK & MERRICK,
Att'ys for Respondent.

435 Affidavit of disbursements on trial and notice of taxation of costs.

Due service of within affidavit and notice admitted this 17th day of July, 1885.

C. D. O'BRIEN,
Attorney for Appellant.
MERRICK & MERRICK,
Attorneys for Respondent.

Filed July 17th, 1885.

SAM. H. NICHOLS, *Clerk.*

436 STATE OF MINNESOTA:

Supreme Court. April Term, A. D. 1885.

CHAS. C. BENNETT, as Assignee of Axel B. Van Norman and Gustav Van Norman, Partners as A. B. Van Norman & Brother, Respondents,
v.
H. R. DENNY, Appellant. } No. 80.

Pursuant to an order of court duly made and entered in this cause on the eighth day of July, A. D. 1885, it is here and hereby determined and adjudged that the order of the court below denying new trial herein appealed from, to wit, of the district court of the second judicial district, sitting within and for the county of Ramsey, be, and the same hereby is, in all things affirmed; and it is further determined and adjudged that the respondents above named do have and recover of said H. R. Denny, appellant herein, the sum and amount of forty-three dollars and thirty-five cents, $43.35, costs and disbursements in this cause in this court, and that said respondents have execution for the enforcement thereof.

Dated and signed this eighteenth day of July, 1885.

By the court.

Attest: SAM. H. NICHOLS, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25 00
Printer's fees for printing briefs, &c.	8 10
Clerk's fees, supreme court	10 00
One affidavit	25
	$43 35

437 Indorsed: State of Minnesota, supreme court. Chas. C. Bennett, assignee, &c., respondent; H. R. Denny, appellant. Transcript of judgment. Filed July 18th, A. D. 1885, at — o'clock — m. Sam. H. Nichols, clerk. A. L. Levi and Merrick & Merrick, attorneys for respondent. Page No. 100, Book H.

(Indorsed.)

STATE OF MINNESOTA, *ss:*

Supreme Court.

I, Sam. H. Nichols, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original, remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this eighteenth day of July, A. D. 1885.

[Seal Supreme Court, Minn., attached.]

SAM. H. NICHOLS, *Clerk.*

[Endorsed:] 428. No. 4116. State of Minnesota, supreme court. Chas. C. Bennett, as assignee, &c., respondent, against H. R. Denny, appellant. Judgment roll. Filed July 18th, 1885. Sam. H. Nichols, clerk. A. L. Levi & Merrick & Merrick, attorneys for respondent.

438 United States of America to Charles C. Bennett, as assignee of A. B. Van Norman & Bro., defendant in error, and to Messrs. Merrick & Merrick, his attorneys, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, on the second Monday of October next, pursuant to a writ of error filed in clerk's office of the supreme court of the State of Minnesota, wherein Henry R. Denny is plaintiff in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness the Hon. James Gilfillan, chief justice of the
439 supreme court of the State of Minnesota, this 18th day of July, in the year of our Lord one thousand eight hundred and eighty-five.

JAMES GILFILLAN,
Chief Justice of the Supreme Court of Minnesota.

(Indorsed:) No. 4116. State of Minnesota, supreme court. Chas. C. Bennett, assignee, &c., *vs.* H. R. Denny. Citation. Filed July 18th, 1885. Sam. H. Nichols, clerk supreme court, Minn.

440 To the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota:

And now comes your petitioner, Henry R. Denny, by C. D. O'Brien, his attorney, and alleges—

That in the year 1884 Charles C. Bennett, as assignee of Axel B. Van Norman and Gustav Van Norman, copartners as Van Norman & Bro., commenced an action at law against your petitioner in the district court of the State of Minnesota in and for the county of Ramsey, in which the sole relief sought was a money judgment for the conversion by your petitioner of a certain stock of jewelry alleged to have been converted by your petitioner on the 31st day of December, 1883.

That your petitioner was at the time of such alleged con-
441 version the duly authorized and acting United States marshal in and for the district of Minnesota.

That said action came on for trial at the September, 1884, term of said court and resulted in a verdict in favor of said Bennett, as assignee, and against your petitioner for the sum of $5,432.80, the said plaintiff in said action claiming ownership to the property in question by virtue of an assignment claimed to have been made by the assignors, A. B. Van Norman & Bro., to the said Bennett on the 31st day of December, 1883, under the insolvent law of 1881 of the State of Minnesota.

442 That said Bennett did not claim possession of said property by or under any other authority or right other than the said insolvent law of 1881 of the State of Minnesota and the said assignment to him by the said A. B. Van Norman & Bro.

Your petitioner, by his answer and proofs, submitted three separate defences and, first, denies the validity of the assignment upon its face, and asserting that such assignment was fraudulently made; second, that your petitioner justified his taking of the property from said Bennett's assignors under and by virtue of a writ of attachment duly issued to your petitioner, as United States marshal in
443 and for the district of Minnesota, out of the United States circuit court in and for the district of Minnesota, in a certain action wherein one Peter Lapp and Lem. W. Flershem were plaintiffs and the said Bennett's assignors, A. B. Van Norman & Bro., were defendants; and, third, your petitioner claimed in his answer and by his offered proofs that the said Bennett, as such assignee, and said A. B. Van Norman & Bro. had at the time and prior to the time of the commencement of the above-mentioned action duly intervened in the action and proceedings had in the United States circuit court in the action wherein said writ of attachment
444 had been issued, and had all become parties to such action and proceedings.

That in said district court testimony was offered which would have established the justification contended for, showing the fraudulency of said assignment, the due issuance of said writ of attachment, and the intervention of said Bennett as assignee, but such offered testimony was refused, and the jury instructed to return a verdict against your petitioner, notwithstanding such offer and the testimony had, and the jury thereupon rendered a verdict
445 for the sum of $5,432.80 against your petitioner; that thereupon proceedings on the part of the said Bennett in said action were staid by an order of court, and your petitioner duly made a

motion for a new trial, which motion was denied by the said district court, and from the order denying such motion for a new trial your petitioner duly appealed to the supreme court of the State of Minnesota, the same being the highest court in said State in which a decision could be had in said action.

That on the 18th day of July, 1885, final judgment was rendered in said action in said court by said supreme court of Minne-
446 sota affirming the said order appealed from and holding and adjudging that such attachment does not bar or prevent the said Bennett, as such assignee, from proceeding against the United States marshal, said Denny, in the State court as for the conversion of the assigned property, though the attachment remains undissolved, and that the appearance and intervention of said plaintiff in the action in said circuit court did not affect his right to proceed in the State court against said marshal, and holding that said Denny, as United States marshal, had no rights in the property levied on under such writ of attachment after the assignment to said
447 Bennett by said A. B. Van Norman & Bro., under the laws of 1881, State of Minnesota.

That all the foregoing facts appear in the records and proceedings in said action; in consequence whereof manifest error has resulted, to the great damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error and such other process as may be necessary to secure the correction of the errors aforesaid in the Supreme Court of the United States.

C. D. O'BRIEN,
Attorney for Petitioner, St. Paul, Minn.

448 Allowed this 18th day of July, eighteen hundred and eighty-five.

JAMES GILFILLAN,
Chief Justice Supreme Court of Minnesota.

(Endorsed:) State of Minnesota, supreme court. Chas. C. Bennett, as assignee, &c., def't in error, *vs.* H. R. Denny, plaintiff in error. Petition and allowance of writ of error. Filed July 18, 1885. Sam. H. Nichols, clerk.

449 STATE OF MINNESOTA:

Supreme Court.

HENRY R. DENNY, Plaintiff in Error,
vs.
CHARLES C. BENNETT, Assignee, etc., Defendant in Error.

The above-named plaintiff in error hereby assigns the following errors, committed by the court below upon the record herein:

First. That the court erred in holding that the assignment was not void upon its face.

Second. That the court erred in holding that fraud upon the part of the assignor and assignee would not vitiate the assignment.

450 Third. That the court erred in excluding the evidence offered to show the fraudulent intention on the part of the assignee and assignor in making said assignment.

Fourth. That the court erred in holding the insolvent act of the State of Minnesota, known as the act of 1881, in being valid and constitutional.

Fifth. That the court erred in holding that the intervention on the part of the defendant in error in the proceedings in the United States circuit court for the district of Minnesota did not operate as a bar in his action against the plaintiff in error in the State court.

C. D. O'BRIEN,
Counsel for P'ff in Error, St. Paul, Minn.

451 (Endorsed:) No. 4116. State of Minnesota. Supreme court. H. R. Denny, p'ff in error, *vs.* Chas. C. Bennett, etc., def'ts in error. Assignment of errors. Received and filed this 15th day of August, A. D. 1885. Sam. H. Nichols, clerk.

452 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, Sam. H. Nichols, clerk of said court, do hereby certify that I have carefully compared the within and foregoing copy with the original papers, record, and judgment roll in the within-entitled action remaining on file and of record in my office, and that the same is a true and authentic transcript thereof and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme court, at the capitol in the city of St. Paul, this 18th day of September, A. D. 1885.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
453 *Clerk of the Supreme Court, Minnesota.*

Endorsed on cover: Minnesota supreme court. No. 330. Henry R. Denny, plaintiff in error, *vs.* Charles C. Bennett, as assignee of A. B. Van Norman & Bro. Filed October 3, 1885.

FILED
APR 30 1888
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1887.

HENRY R. DENNY,
PLAINTIFF IN ERROR,

vs.

CHARLES C. BENNETT,
AS ASSIGNEE OF
A. B. VAN NORMAN & BRO.,
DEFENDANTS IN ERROR.

No. 330.

WRIT OF ERROR TO SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF AND ARGUMENT

ON BEHALF OF

HENRY R. DENNY.

C. D. O'BRIEN,
Counsel for Plaintiff in Error.

ST. PAUL:
RICE & CURRIER, BOOK AND JOB PRINTERS.
1888.

450 Third. That the court erred in excluding the evidence offered to show the fraudulent intention on the part of the assignee and assignor in making said assignment.

Fourth. That the court erred in holding the insolvent act of the State of Minnesota, known as the act of 1881, in being valid and constitutional.

Fifth. That the court erred in holding that the intervention on the part of the defendant in error in the proceedings in the United States circuit court for the district of Minnesota did not operate as a bar in his action against the plaintiff in error in the State court.

C. D. O'BRIEN,
Counsel for P'ff in Error, St. Paul, Minn.

451 (Endorsed:) No. 4116. State of Minnesota. Supreme court. H. R. Denny, p'ff in error, *vs.* Chas. C. Bennett, etc., def'ts in error. Assignment of errors. Received and filed this 15th day of August, A. D. 1885. Sam. H. Nichols, clerk.

452 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, Sam. H. Nichols, clerk of said court, do hereby certify that I have carefully compared the within and foregoing copy with the original papers, record, and judgment roll in the within-entitled action remaining on file and of record in my office, and that the same is a true and authentic transcript thereof and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme court, at the capitol in the city of St. Paul, this 18th day of September, A. D. 1885.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
453 *Clerk of the Supreme Court, Minnesota.*

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WRIT OF ERROR TO SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF AND ARGUMENT

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HENRY R. DENNY.

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ST. PAUL:
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1888.

Supreme Court of the United States.

OCTOBER TERM, 1887.

HENRY R. DENNY, PLAINTIFF IN ERROR, *vs.* CHARLES C. BENNETT, AS ASSIGNEE OF A. B. VAN NORMAN & BRO., DEFENDANTS IN ERROR.	*No.* 330.

Brief and Argument on behalf of Henry R. Denny, Plaintiff in Error.

STATEMENT OF THE CASE.

In May, A. D. 1884, the defendant in error, as assignee of Axel B. Van Norman and Gustave Van Norman, co-partners as Van Norman & Bro., commenced an action in the District Court of Ramsey County, Minnesota, against the plaintiff in error to recover the value of certain property claimed by the

defendant in error to have been converted by the plaintiff in error upon the 31st day of December, 1883.

The plaintiff below claims ownership to the property in question by virtue of an assignment claimed to have been made to him by the Van Norman Brothers, his assignors, on the 31st day of December, 1883, under the insolvent law of 1881, of the State of Minnesota.

The defendent below, the plaintiff in error here, by his answer and proofs submitted three defenses: *First*, He denied the validity of the assignment upon its face and asserted that it was fraudently made.

Second, He justified his taking of the property under a writ of attachment issued to him as United States Marshal out of the Circuit Court of the United States for the District of Minnesota, in an action begun prior to the assignment under which the plaintiff below claims, wherein Lapp & Flerscheim were plaintiffs and the plaintiff's assignors, the Van Normans, were defendants.

Third, He alleged and offered to prove that at the time of and prior to the commencement of this action both the Van Normans and the plaintiff as their assignee, had intervened in the action referred to in the United States Circuit Court for the District of Minnesota, and had become parties to the same, and that the State Court had no jurisdiction to proceed in this action.

In the State Court the evidence offered by the plaintiff in error tending to support the justification

pleaded in the answer, was ruled out and the Court charged the jury that the plaintiff was entitled to recover, and a verdict was rendered against the defendant therein for the sum of $5,432.80. Upon an appeal to the State Supreme Court, the determination of the lower court was sustained; and the exceptions by the plaintiff in error overruled; and from the final decision of the State Supreme Court the writ of error here presented was sued out.

Assignment of Error.

The plaintiff in error hereby assigns the following errors committed by the State Supreme Court upon the record herein:

First, That the Court erred in holding that the assignment was not void upon its face.

Second, That the Court erred in holding that fraud upon the part of the assignor and assignee would not vitiate the assignment.

Third, That the Court erred in excluding the evidence offered to show the fraudulent intention on the part of the assignee and assignor in making said assignment.

Fourth, That the Court erred in holding the Insolvent Act of the State of Minnesota, known as the Act of 1881, to be valid and constitutional.

Fifth, That the Court erred in holding that the intervention on the part of the defendant in error in the proceedings in the United States Court for the District of Minnesota, did not operate as a bar to his

action against the plaintiff in error in the State Court.

BRIEF OF ARGUMENT:

The first, second, third and fourth assignments of error may be considered together, and present, in the first subdivision, the question as to whether or not an assignment for the benefit of creditors, either statutory or at common law, can be attached for the concurring fraud of the assignors and assignee.

The determination in this action is the first one made, so far as we know, within the United States where it has been asserted that such an attack can not be made upon such documents.

Locke on Attachment, page 522, sec. 240, and cases cited.
Hutchinson v. *Lord*, 1st Wis. 286.
Bogart v. *Phelps*, 14 Wis., 95.
Thayer v. *Willet*, 5 Bos., 344, 354.
Fallon v. *McGrum*, 7 Bos., 141.
Hall v. *Stryker*, 28, N. Y., 596, 600.
Damon v. *Bryant*, 2nd Pick., 411.
Pratt v. *Wheeler*, 6th Gray, 520.
Owen v. *Dixon*, 17 Com., 492, 497, 498.

The second subdivision of the question involved in the four errors referred to, necessarily presents the sufficiency and constitutionality of that certain Act of the State of Minnesota, known as the Insolvency Act of 1881, being chapter 148 of the Session Laws of the State of Minnesota for that

year. For it is upon the provisions and construction of the provisions of this law that the Supreme Court of Minnesota bases its determination that assignments made under it cannot be attacked for the concurrent fraud of the parties concerned in the same; the holding of that Court upon the subject being, shortly, that the Act alluded to is a bankrupt act, and, for that reason assignments made under it cannot be affected by the fraudulent intention or fraudulent acts of either the assignor or assignee, or indeed the concurrent improprieties of each of them. And this position of the Court below is really the pivotal question around which are grouped all of the errors contained in the first four assignments on the part of the plaintiff in error.

It is not proposed, by the plaintiff in error, to deny at this time, that, in the absence of federal legislation, a state may enact and enforce insolvent laws which are necessarily obligatory upon their own citizens or upon those who seek the remedies to be found and applied by the State courts of such particular State. But it is asserted by the plaintiff in error that, inasmuch as such local laws have no exterritorial force, that they are neither obligatory upon the non-resident creditor or upon the federal tribunals sitting in that State and exercising original jurisdiction of controversies between such non-resident creditors or citizens of other States, and the citizens of the particular State wherein the controversy may arise. And it is further asserted that there is also, upon the State legislatures, the further

inhibition that such laws shall in nowise impinge upon or defeat the beneficial provisions of the federal constitution which are intended for the protection of the citizens at large. And if, in the operation and administration of such local insolvent laws, their substantial effect is to impair the obligation of contracts made outside of the particular State where they exist, or to deprive substantially the non-resident citizen of all protection or remedy for the enforcement of his contracts, they will be set aside by this Court as being contrary and inimical to the constitutional privileges and guarantees which have been adverted to. And in the first instance the test to be applied to local laws of the character alluded to is, that the conditions upon which they are to operate must actually exist. In other words, if a State in the absence of federal legislation should proceed to enact a bankrupt law, for the benefit of protection of its insolvent citizens, it cannot by express provision extend the operation of such act to those of its citizens, who are not insolvent, and by a mere legal declaration deprive the non-resident of the remedies which he could obtain in the federal courts against the party with whom he contracted. The insolvent act of Minnesota, under consideration, violates at once these conditions. It is not limited in its application to persons who are insolvent or in contemplation of insolvency, nor does it provide what condition of things or acts constitute insolvency, according to its or any other definition. Its first section, which is the basis of the entire act, provides,

"Whenever the property of any debtor is attached or levied upon by any officer, by virtue of any writ or process issued out of a court of record in favor of any creditor or garnishment made against any debtor, may, within ten days after the levy of such attachment process or garnishment shall have been made, make an assignment of all his property and estate, not exempt by law, for the equal benefit of all his creditors in proportion to their respective valid claims, who shall file releases of their debts and claims against such creditors as hereinafter provided,—which assignment shall be made in accordance with, and be governed by the laws of the State of Minnesota relating to assignments made by debtors, except as herein provided. And upon the making of such assignment all attachments, levy or garnishment so made shall be dissolved, upon the appointment and qualification of an assignee or receiver, and thereupon the officers shall deliver the property attached or levied upon to such assignee or receiver. * * * * * * * * * * * * *"

The second section provides for the appointment of a receiver for an insolvent debtor, but in the first section no such requirement as that of insolvency exists. The effect of the provisions of the first section is to withdraw at once from the non-resident creditor, bringing his action in the federal courts, the right to such process either by attachment or garnishment as against a citizen of Minnesota, or indeed other persons seeking refuge or being found in that State, regardless of the fact of the solvency

or insolvency of the debtor. In addition to that effect, it is further provided by the express enactments of Section 1, that no creditor or suitor shall have any right to share in the distribution of the property of the debtor unless he executes in advance of such distribution a full and complete common-law release to such debtor. The effect of these two provisions is at once to withdraw from the creditor as against the solvent or insolvent debtor, who chooses to avail himself of the protection of this act, all legal remedies for the enforcement of any contract which may exist between the parties; and to compel the execution by the creditor to his debtor of a release of a description, force and character beyond the capacity of the local legislature to create. For, bearing in mind the well settled principle that a release by operation of law, under a local insolvent act, has no ex-territorial force, we are here confronted by a statute which, by an evasion of that principle, imposes upon the creditor a sort of moral duress to compel him to do that which their local law would be ineffectual to produce. Such legislation must necessarily come within the denunciation of the constitutional guarantees, which we are about to advert to, and if the object sought to be indirectly obtained is contrary to that which would be permitted as the legitimate effect of direct legislation, the attempt, in the manner provided in this statute, must be as equally inefficacious as a direct statute to that effect would necessarily be. And the case at bar will be determined by this Court precisely as if

this statute, by direct terms, sought to give exterritorial force to the release of the debtor, provided by law, and the question were presented upon a plea founded upon such statute in an action for the balance due.

The principles established by this Court as the governing ones in controversies of this character upon the questions here presented, are condensed it the opinion of this Court in *Gilman* v. *Lockwood*, 4 Wallace, 410; and the contention upon the part of the plaintiff in error in this case is, that it is apparent upon the face of this law that it violates those principles in that the law itself is so framed that it does impair the obligation of contracts. It is unnecessary to review the several opinions of this Court upon the subject culminating in the expression of the final opinion in *Gilman* v. *Lockwood*, but they are found in the very complete reviews given by the Court upon the subject in *Ogden* v. *Saunders*, 12 Wheaton, 213; *Sturgis* v. *Crowlinshield*, 17 Wheaton, 120; *Baldwin* v. *Dale*, 1st Wallace, 223. And it is respectfully asserted that an examination of the act in question will show that it goes beyond the line of demarkation between the power of the States and the federal constitution as laid down in those decisions. And, indeed, the application of this law to the contract of the non-resident creditor deprives him of any and all remedy, save such as may be allotted to him by the creditor himself. Of this position the record in this case is ample and sufficient evidence. Lapp & Flersheim, citizens of Illinois, commenced their action in

the Circuit Court of Minnesota against the defendants, Van Normans, to enforce a contract for the sale and delivery of goods, made between those parties in the State of Illinois. In that action the Circuit Court of the United States, conformable to the practice of that Court as well as the statutes of Minnesota, existing at the time the contract was made and still continuing to exist, excepting insofar as the same are sought to be abrogated by the act of 1881, under consideration, issued its process of attachment and caused the same to be levied upon the property of the debtors, Van Norman brothers. After the levy of such attachment, and while the marshal was in possession of the property under his writ, the Van Normans, under the provisions of this insolvent and bankrupt act, made their assignment to an assignee of their own selection, and sought in the Circuit Court to have the attachment dissolved and the property in possession of the marshal turned over to their assignee, because of the making of the assignment. The Circuit Court refused such application and proceeded to judgment and execution in the action. After such determination, and after such refusal upon the part of the Circuit Court to vacate the process, the defendant in error as the assignee of the Van Normans brought this action in the State Court against the marshal in trover, and recovered judgment for the value of the goods taken,—which judgment has been affirmed by the State Supreme Court.

Here, then, we have, upon the theory of this action and the opinion of the State Supreme Court, an ab-

solute denial to the non-resident creditor of any right, process or remedy against the Van Normans; for, by the provisions of the first section of the act of 1881, all of the provisions of that act were put in operation by the mere issuance of the attachment against the Van Normans from the Circuit Court, regardless of the question of their solvency or insolvency. In other words, the debtor upon the issuing of process of this character against him, determines for himself whether or not he shall avail himself of the protection of this pretended bankrupt or insolvent law. The law extending such protection to him upon his application, regardless of the fact of his solvency or insolvency. He not only determines that question, or rather it becomes immaterial, but he selects his assignee, and at once all remedial or available process is suspended against him in the hands of any of his creditors, nor are they permitted to share in the estate so assigned until they shall, in advance of ascertaining its condition or character, execute to the debtor a common-law release of their entire claim. It is, perhaps, proper in view of this extraordinary statute, to inquire what, if any, remedy is left by it to the non-resident creditor. It may be said that he need take no part in the assignment proceedings, and so leave his contract intact; but this also leaves it unenforcible, and he is prohibited from sharing in the proceeds of the estate, unless he shall in advance file his formal renunciation of his contract and all of rights thereunder; for the language of the statute requires him to make a full release of his contract in

consideration of the benefits to accrue to him from the assignment. There is certainly no observable remedy left to him in any of the Courts under these circumstances. A re-enactment of this statute in Michigan has been held unconstitutional, because, among other things, "it violates the prohibition against impairing the obligation of contract since it deprives creditors of their remedies." *Risser* v. *Hoyt*, 53 Mich., 185. Local statutes producing somewhat similar effects and restricting the power of the federal courts in an action by a non-resident, in action of which they have original jurisdiction, have been uniformly condemned by this Court.

The Union Bank of Tenn. v. *Jolly's administrators*, 18 Howard, 503.
Hyde et al v. *Stone*, 20 Howard, 170.
Payne v. *Hook*, 7 Wallace, 425.

Upon the fifth error assigned the question presented is less difficult. The issuance of the writ of attachment by the Circuit Court of the United States, followed by the defendant's levy upon the property in question, and the refusal of the Circuit Court to dissolve the attachment, protected the marshal, in this, that the Circuit Court, having jurisdiction of the parties and the subject matter of the action, had jurisdiction and was necessarily compelled to pass upon the question of its dissolution on the motion made by the plaintiff and his assignors, and the refusal of that Court to dissolve the attachment and surrender the property to the plaintiff, constituted to

this extent a judgment which was binding upon the plaintiff and his assignors, and this judgment is evidenced in the order of the Circuit Court refusing to dissolve attachment, (page 211, record, folio 413).

Drake on Attachments, sec. 426; 1st Greenleaf's Evidence, sec. 532, page 619, note *a*, and page 564; 1st Starkey on Evidence, pages 258, 259; *Guenn* v. *Clark*, 2nd Kernan, N. Y., 343; *Bigelow* v. *Windsor*, 1st Gray, 297, 301; *King* v. *Chase*, 15 N. H., 1; *Robinson* v. *Leavitt*, 7 N. H., 73; *Voocht* v. *Wiercht*, 2nd B. & A., 662; *Outram* v. *Morewood*, 3rd East, 346; *Blakeman* v. *Canal Co.*, 2nd C. M. & R. Exch., 133; *Strutt* v. *Bovington*, 5 Esp., 54; Calhoun's *Lessee* v. *Dunning*, 4 Dallas, 108; *Eastman* v. *Cooper*, 15 Pick., 276; *La Guen* v. *Gouverneur et al*, 1st Johnson's cases, 436.

The plaintiff having upon his own motion become a party to the proceedings in the Circuit Court, cannot proceed against the marshal in trover in the State Court while the attachment remains undissolved; and the State Supreme Court erred in sustaining the lower Court in excluding the testimony offered to show that the plaintiff had become such party and in refusing to give such evidence its legal effect. (See Ex. Z., page 172, record, and page 187 and 188, folio 363, record.)

As a result the plaintiff in error has been denied the protection to which he was entitled from his process.

Buck v. *Colbath*, 3rd Wallace, 334, *Taylor* v. *Carroll*, 20 Howard, 581; *Freeman* v. *Howe*, 24 Howard, 450; *Peck* v. *Jenness*, 7 Howe, 624; *Hogan* v. *Lucas*,

10 Peters, 400; *Wallace* v. *McConnell*, 13 Peters, 136.

This latter position is in nowise dependent upon the determination of the court upon the validity of the act of 1881, but forms, of itself, a separate and complete defense. It is difficult to discover what protection the plaintiff in error would have under the determination made by the State Supreme Court in this case. He was Marshal of the United States for the Circuit of Minnesota. The action in which the process of attachment was issued was begun in the Circuit Court of that district prior to the assignment. Under such process he had seized all of the property and was in possession of it when the assignment was made. The claimants and the defendant in error in this case intervened in the proceedings, in the Circuit Court, by a motion to dissolve the attachment, their motion was denied, and the plaintiff in error compelled to remain in possession of the property,—for which possession he was accountable both to the plaintiffs in the action and the Court; and while so in possession, and his process in full force and effect, this action was commenced against him, a verdict obtained for the entire value of the property, so in his hands, under the process of that Court, and that verdict sustained by the determination of the Court of last resort in Minnesota.

The judgment of the Supreme Court of Minnesota should be reversed and a judgment ordered to be entered for the plaintiff in error.

C. D. O'Brien,

Counsel for Plaintiff in Error.

Supreme Court of the United States.

[OCTOBER TERM, 1888.]

HENRY E. DAVIS, *Plaintiff in Error*,

vs.

CHARLES C. BEARDSLEY, Assignee of A. B. VAN NORDEN and GERTRUDE VAN NORDEN, partners as A. B. VAN NORDEN & SON, *Defendants in Error*.

No. 41

10 Peters, 400; *Wallace* v. *McConnell*, 13 Peters, 136.

This latter position is in nowise dependent upon the determination of the court upon the validity of the act of 1881, but forms, of itself, a separate and complete defense. It is difficult to discover what protection the plaintiff in error would have under the determination made by the State Supreme Court in this case. He was Marshal of the United States for the Circuit of Minnesota. The action in which the process of attachment was issued was begun in the Circuit Court of that district prior to the assignment. Under such process he had seized all of the property and was in possession of it when the assignment was made. The claimants and the defendant in error in this case intervened in the proceedings, in the Circuit Court, by a motion to dissolve the attachment, their motion was denied, and the plaintiff in error compelled to remain in possession of the property,—for which possession he was accountable both to the plaintiffs in the action and the Court; and while so in possession, and his process in full force and effect, this action was commenced against him, a verdict obtained for the entire value of the property, so in his hands, under the process of that Court, and that verdict sustained by the determination of the Court of last resort in Minnesota.

The judgment of the Supreme Court of Minnesota should be reversed and a judgment ordered to be entered for the plaintiff in error.

C. D. O'Brien,

Counsel for Plaintiff in Error.

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CLERK.

Supreme Court of the United States.

[OCTOBER TERM, 1888.]

HENRY R. DENNY, *Plaintiff in Error*,

vs.

CHARLES C. BENNETT, AS ASSIGNEE OF A. B. VAN NORMAN AND GUSTAVE VAN NORMAM, PARTNERS AS A. B. VAN NORMAN & BRO., *Defendants in Error.*

No. 67.

Supplemental Brief in Reply on Behalf of Henry R. Denny, Plaintiff in Error.

C. D. O'BRIEN,

Counsel for Plaintiff in Error.

RICH & CLYMER, PRINTERS, ST. PAUL.

Supreme Court of the United States.

[OCTOBER TERM, 1888.]

HENRY R. DENNY, *Plaintiff in Error*,

vs.

CHARLES C. BENNETT, AS ASSIGNEE OF A. B. VAN NORMAN AND GUSTAVE VAN NORMAM, PARTNERS AS A. B. VAN NORMAN & BRO., *Defendants in Error*.

No. 67.

Supplemental Brief in Reply on Behalf of Henry R. Denny, Plaintiff in Error.

Counsel for defendant in error falls into two misapprehensions as to the condition of the record, and upon which misapprehensions are based to a large extent his argument that this action could be maintained against the plaintiff in error in the then existing condition of things.

It is asserted in the third paragraph of his Brief that the fifth assignment of error is not well taken and is without merit because the entire property of the Van Normans had been levied on by the sheriff of Ramsey county prior to the levy by the marshal, and for that reason the marshal had no right to make the levy. A reference to the record will show

that this position of counsel is founded upon an entire misapprehension. The sheriff of Hennepin County did not levy upon the entire property of the Van Normans, but only upon certain specific articles. (See Exhibit "A," Return of Sheriff on Writ of Attachment, pages 155, 156, of record) and compare inventory of property levied upon by marshal, Exhibit "D," pages 168, 169, 170, 171, of record.

The additional misapprehension of counsel, to which it is desired particularly to call the attention of this court is the statement in paragraph 3, page 4, of Brief for defendant in error, being the assertion "that Bennett had full and actual possession of the same (meaning the property) as an officer of the District Court and so continued for some hours, when the plaintiff in error, as United States marshal, seized the same under the Lapp & Flerschen writ of attachment." This position is negatived by the opinion of the Supreme Court of the State of Minnesota, in which that court affirmatively establish the fact that plaintiff in error had seized the property under the writ of attachment prior to the making of the assignment. (Folio 429, page 217, of record.

These two facts being established by the record,—first, that the levy of the marshal was not subject to that of the sheriff; secondly that the levy by the marshal was made prior to the making of the assignment,—the case falls within the scope of the decisions of this court in *Conner* vs. *Long*, 104 U. S., 228; *Doe* vs. *Childress*, 21 Wall. 642; *Johnson* vs. *Bishop*, 1st Woolworth, 224, and *Bradley* vs. *Frost*.

3rd Dillon, 457.—which latter three cases are cited and approved in *Conner* vs. *Long*, 104 U. S., 228. And the doctrine of these decisions seem to be conclusive upon the facts established by the record herein.

For the benefit of this court I print at large in this supplemental Brief the insolvent act of Minnesota, known as the Act of 1881.

C. D. O'BRIEN,

Counsel for Plaintiff in Error.

CHAPTER 148.

An act to Prevent Debtors from giving Preference to Creditors, and to Secure the Equal Distribution of the Property of Debtors Among their Creditors, and for the Release of Debts Against Debtors.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Whenever the property of any debtor is attached or levied upon by any officer, by virtue of any writ or process issued out of a court of record of this State, in favor of any creditor or garnishment made against any debtor, such debtor may within ten (10) days after the levying of such attachment, process or garnishment shall have been made, make an assignment of all his property and estate not exempt by law, for the equal benefit of all his creditors in proportion to their respective valid

claims, who shall file releases of their debts and claims against such creditors as hereinafter provided, which assignment shall be made in accordance with and be governed by the laws of the State of Minnesota relating to assignments made by debtors, except as herein provided, and upon the making of such assignment all attachments, levy or garnishment so made shall be dissolved upon the appointment and qualification of an assignee or receiver, and thereupon the officers shall deliver the property attached or levied upon to such assignee or receiver, unless the assignee shall within five (5) days after such assignment, file in the office of the clerk of court where such attachment was issued or judgment was rendered, a notice of his intention to retain such attachment, levy or garnishment, in which case any such attachment, levy or garnishment shall inure to the benefit of all the said creditors, and may be enforced by the assignee by his substitution in the action as such in the same manner as the plaintiff might have enforced the same had such assignment not been made; *provided*, however, that this section shall not apply to cases where an execution has been issued upon a judgment in an action where the complaint has been filed in the office of the clerk of the court twenty (20) days prior to the entry of the judgment.

SEC. 2. When any debtor, being insolvent, shall confess judgment, or do any act or make any conveyance whereby any one of his creditors shall obtain a preference over any other of his creditors, or shall omit to do any act which he might lawfully do to prevent any one of his creditors from obtaining preference over his other creditors, contrary to the intent of this act, or if he shall not within ten (10) days after any levy by attachment, execution or garnishment made against him, make an assignment of all his property, as provided in

section one (1) of this act, or within such time, in good faith, institute proceedings to vacate the attachment and execution or garnishment, or secure a release of such levy and defend against the said garnishment at the first opportunity, then, or within sixty (60) days thereafter, any two or more of his creditors holding and owing debts or claims of not less than two hundred dollars ($200) in the aggregate amount, may make a petition to the District Court, or a Judge thereof, setting forth therein such matters and facts as may be pertinent, which petition may be heard in any county, in the discretion of the Judge, and after notice given in pursuance of the order of the court, and in such manner as the court may direct, to the debtor and creditors sought to be preferred, of the time and place of hearing, the court in term time, or a Judge in vacation, shall proceed summarily upon such petition, to hear the parties and receive such evidence as may be proper, and if it shall appear to the court or Judge that the debtor is insolvent, or has been giving or is about to give a preference to any of his creditors over other of his creditors or any of them, or has refused or neglected to make an assignment of his property as herein provided, the court or Judge shall appoint a receiver who shall take possession of all the debtor's property, evidences of property or indebtedness, books, papers, debts, choses in action, and estates of every kind of the debtor, including property attached or levied upon or garnished in the manner and subject to the limitations herein provided, and of all property conveyed in violation of the provisions of this act, and have charge and control of the same and of all debts and property garnished, except property exempt by law, and shall within four (4) months of the time of his appointment, unless the court or Judge otherwise directs and allows further time, convert the same to money,

and shall marshal and distribute the same among the several creditors in proportion to their several claims, who shall file releases of all claims against the insolvent debtor in consideration of the benefit of the provisions of this act as hereinafter provided, whether their claims are due or to become due, and who shall come in and prove their respective claims within such time and in such manner as the court or Judge shall direct, and the court or Judge shall order the debtor to file a schedule of his debts, and to whom they are due or payable, and of his property, including all notes, accounts and bills payable to him, and the proof thereof, and the payment of dividends in all proceedings shall be had under the provisions of the laws of this State relating to receivers, and the court or Judge may order and direct such debtor to do whatever is necessary and proper to carry this act into effect.

SEC. 3. No assignment hereafter made for the benefit of such creditors shall give to any one creditor any preference over the claims of another creditor, except in cases expressly provided by law. If any insolvent debtor shall confess or suffer judgment to be procured in any court with intent that any one of his creditors shall obtain a preference over any other of his creditors, such insolvent debtor shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars ($500); and, in default of payment, shall be imprisoned in the county jail for a period not exceeding six (6) months. The court may at any time, upon the filing of affidavits or other evidence satisfactory to the court, grant an order restraining such debtor from collecting any bills, notes, accounts or other property, or from disposing of, or in any manner interfering with the property of said estate, or may, by writ of *ne exeat* or by order, restrain said debtor from leaving the

State until the further order of the court, or may require him at any time to appear and make full disclosures as to any disposition of property, or in relation to any other matter pertaining to said estate.

SEC. 4. Conveyances and payments made and securities given by any insovlent debtor, or a debtor in contemplation of insolvency within four (4) months of making an assignment, as provided in section one (1) of this act, with a view of giving a preference to any creditor upon a pre-existing debt, or to any persons under liability for such debtor over another, shall be void as to all creditors or persons receiving the same, who shall have reasonable cause to believe that such debtor was insolvent, and all such conveyances made and securities given at any time unaccompanied with a delivery or change of possession of the property to the grantee, unless the instrument containing the grant or conveyance shall have been duly filed or docketed before the commencement of such four (4) months, shall be void as a preference as to any creditor; and the assignee may, by action or other proper proceedings, have all such conveyances, payments and preferences annulled and adjudged void, and recover the property so conveyed, or the value thereof, and recover the payment so made, and convert all proceeds into money, as provided in this act. *Provided*, that the provisions of this act shall not apply to any payment or satisfaction, in whole or in part, of a past-due debt made in the usual course of business, without any intent on the part of the creditor to evade the provisions of this act.

SEC. 5. All actions or proceedings, brought under the provisions of this chapter, shall be commenced in the county where the debtor, debtors or any one of them resides, if a resident of this State, and if not a resident of

this State, such action or proceeding may be brought in any county which the plaintiff shall designate in his complaint, or where such debtors, or any of them, has property subject to attachment or levy. The court or Judge may at any time during the pendency of the petition under the second section of this act allow new parties to come in and be joined in such petition, and such petition shall not be dismissed until after the expiration of twenty (20) days from the time of notice by mail to each creditor, or by personal service upon each of such creditors.

SEC. 6. Costs in cases upon which attachments or levies are made which are dissolved under the provisions of this act, and a reasonable fee not exceeding twenty-five dollars ($25), in the discretion of the court, to an attorney for creditors petitioning under this act, shall be preferred and be paid first, by the receiver appointed hereunder.

SEC. 7. All actions and proceedings to be commenced under the provisions of this act may be commenced and prosecuted in the name of the assignee or receiver appointed as herein provided, and all laws of the State of a general nature, applicable to receivers and assignments, and not in conflict with the provisions of this act, shall apply to assignees and receivers appointed hereunder, as the case may require.

SEC. 8. Any creditor whose claim is disallowed in whole or in part by any assignee or receiver appointed or selected under this act, or under the provisions of the assignment laws of this State regarding the assignment of debtors, may appeal from such disallowance to the District Court, and there have such claims tried as other civil actions. The assignee shall, within ten (10) days after his disallowance of any claim, in whole or in part, give written notice to such creditor of such disallowance, which notice

may be served personally or by mail, as in other cases, on such creditor, his agent or attorney, and thereupon such creditor may appeal from such disallowance within ten (10) days after the service upon him of such notice of disallowance made by the assignee, and which notice may be served on such assignee personally or by mail, as aforesaid, and in case such service is by mail, the time within which such notice of appeal is to be given shall be within twenty (20) days from the time of such notice of disallowance.

SEC. 9. In case of the death of an assignee or receiver, the court may appoint another to fill the vacancy, and the court may, for any proper cause, remove such assignee or receiver, and appoint another in his stead, and the court shall order such removal upon the vote of two-thirds (2-3) in number and amount of the creditors.

SEC. 10. No creditor of any insolvent debtor shall receive any benefit under the provisions of this act, or any payment of any share of the proceeds of the debtor's estate unless he shall have first filed with the clerk of the District Court, in consideration of the benefits of the provisions of this act, a release to the debtor of all claims other than such as may be paid under the provisions of this act, for the benefit of such debtor, and thereupon the court or Judge may direct that judgment be entered, discharging such debtor from all claims or debts held by creditors, who shall have filed such releases; *provided*, however, that when any creditor of such insolvent debtor who has made such assignment of his property, or of whose property a receiver has been appointed as provided in this act, alleges by complaint made to the Judge before the time for the distribution of the insolvent's assets among his creditors as herein provided, that such insolvent debtor has fraudulently concealed or fraudulently incumbered or dis-

posed of any of his property with the intent to cheat and defraud his creditors, such Judge may allow the insolvent debtor to appear bebefore him at a time and place to be designated by such judge, and after giving such complaining creditor notice of the time and place of hearing, in such manner as the judge may direct, the Judge may proceed upon such complaint summarily, without the allegations therein being controverted or denied, and may hear such legal evidence as he may deem pertinent, relating to such fraudulent concealment, incumberance or disposal of said debtor's property as alleged in said creditor's complaint, and after said hearing said judge may, in his discretion, order or direct that all of said debtor's property and assets, not exempt by law, be distributed among his creditors as hereinbefore provided, upon their filing such releases, or without their filing releases, as aforesaid. And creditors may be examined in like manner in respect to the validity of their debts.

SEC. 11. Such assignee or receiver shall, within ten (10) days after his appointment, publish a notice in a daily newspaper published at the capital of this State, and also in a daily or weekly newspaper in the county where the debtor, debtors or any of them reside, if any is there published, and by sending notices through the mail to such creditors whose residences are known to the assignee or receiver of his appointment, and all creditors claiming to obtain the benefits of this act shall file with such assignee or receiver their claims, within twenty (20) days after such publication.

SEC. 12. After the payment of costs, as herein provided, debts due the United States, the State of Minnesota, all taxes or assignments levied and unpaid, expenses of the assignment and executing the trust, the assignee or receiver shall pay in full, if sufficient then remains

for that purpose, the claims, duly proven, of all servants, clerks, or laborers, for personal services or wages owing from said debtor, for services performed for the three (3) months preceding said assignment, not exceeding fifty dollars ($50) in each case, and the balance of said estate shall then be equally distributed among the general creditors thereof under the direction of the court.

SEC. 13. This act shall take effect and be in force from and after the first (1st) day of July, A. D. one thousand eight hundred and eighty-one (1881).

Approved March 7, 1881.

CHAPTER 70.

An Act to Amend Chapter One Hundred and Forty-Eight (148) of the General Laws of One Thousand Eight Hundred and Eighty-one (1881), entitled An Act to Prevent Debtors from Giving Preferment to Creditors, and to Secure the Equal Distribution of the Property of the Debtors Among their Creditors, and for the Release of Debts Against Debtors.

Be it Enacted by the Legislature of the State of Minnesota:

SECTION 1. That chapter one hundred and forty-eight (148) of the general laws of one thousand eight hundred and eighty-one (1881) be and hereby is amended by adding thereto the following section:

SEC. 46. Whenever, at the time of the appointment of a receiver under sections one (1) or two (2) of this act, the property or any part

thereof, of said insolvent debtor is under attachment levy or garnishment by virtue of any writ or process issued by any justice of the peace of this State, said attachment, levy or garnishment shall be dissolved in the same manner as when said attachment, levy or garnishment is by virtue of any writ or process issued by any court of record of this State, and the plaintiff therein and the officer making the same shall thereafter have the same rights, and no greater rights, by virtue thereof, and the attachment, levy or garnishment shall thereafter be proceeded with in the same manner as though the the same had been made by virtue of a writ or process issued out of a court of record of this State; *Provided, however*, that section one (1) shall not apply to any case when an execution has been issued upon a judgment in an action wherein the complaint has been filed with the justice of the peace twenty (20) days prior to the date of the levy upon said execution.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 9, 1885.

Supreme Court of the United States

OCTOBER TERM, 1885.

(NO. 67 ~~334~~)

HENRY R. DENNY, PLAINTIFF IN ERROR,

vs.

CHARLES C. BENNET, AS ASSIGNEE OF A. B. VAN NORMAN AND GUSTAVE VAN NORMAN, PARTNERS AS A. B. VAN NORMAN & BRO., DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF MINNESOTA.

BRIEF OF DEFENDANT IN ERROR.

AMBROSE N. MERRICK,
Attorney for Defendant in Error.

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AMBROSE N. MERRICK,
Attorney for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887

(No. ~~336~~ 67)

HENRY R. DENNY,

Plaintiff in Error,

vs.

CHARLES C. BENNET, as assignee of A. B. VanNorman and Gustave VanNorman, partners as A. B. VanNorman & Bro.,

Defendant in Error.

Brief on behalf of Charles C. Bennet, Assignee, &c., Defendant in Error.

STATEMENT OF THE CASE.

The statement of the case made by the plaintiff in error not embracing a full history of the same, and the questions involved and the manner in which they were raised, the defendant in error makes this his brief statement:

A. B. VanNorman and Gustave VanNorman, partners under name of VanNorman & Brother, were, on the 31st day of December, 1883, insolvent and unable to meet their obligations. That on said day J. H. Purdy & Co., of Chicago, holding a claim against the said firm of A. B. VanNorman & Brother, which was past due,

commenced an action in the District Court of Hennepin county, Minnesota, in which a writ of attachment was regularly issued and duly levied upon all of the goods and property of the said VanNormans, at about twelve o'clock m. of said day. That the sheriff of said Hennepin county closed the doors of the store in which all of said property was situate, and was holding the same when about 4 o'clock in the afternoon of said day the plaintiff in error, through his deputies, obtained entrance to said store, and claimed the right to make an attachment upon a writ issued out of the United States Circuit Court for the district of Minnesota, in favor of Lapp & Flershem of Chicago, and against the VanNormans. That matters remained in this condition until about 7 o'clock, when Charles C. Bennet, defendant in error, appeared in the store of the VanNormans, and announced that the VanNormans had made an assignment to him of all their property, goods and effects, under the act of 1881, for the equal benefit of all their creditors, and at same time exhibited a bond to the sheriff, marshal and others, for the faithful discharge of his duties as such assignee, duly approved as required by law, and at same time demanded of said sheriff the possession of all of said property of said insolvents so as aforesaid levied upon by him. That thereupon said sheriff immediately surrendered all of said property so levied upon and all of the property of said insolvents to the said Charles C. Bennet, defendant in error, who then entered into the possession and control of the same, and continually maintained said possession until about 11 o'clock p. m. of said day when he was by force and violence deprived of said possession by the plaintiff in error.

That thereafter and on the 21st day of January, 1884, defendant in error applied to the United States Circuit Court, District of Minnesota, to have the attachment wherein Lapp & Flershem were the plaintiffs, dissolved, and for an order requiring the marshal to turn over the property seized by him under said attachment to the defendant in error, which application was thereupon by the Court denied. That on the 27th day of February, 1884, defendant in error commenced this action against plaintiff in error in the District Court of Ramsey County to recover the value of the property taken from him by plaintiff in error; that said action was regularly tried and a verdict rendered in favor of defendant in error for the sum of $5,432.80, on the 14th day of November, 1884; that a motion for a new trial having been denied, an appeal from said order was taken to the Supreme Court of the State of Minnesota, where on the 8th day of July, 1885, the order appealed from was affirmed and judgment entered in favor of defendant in error and against plaintiff in error. That on the 18th day day of July, 1885, said cause was removed to this court by writ of error.

BRIEF OF ARGUMENT.

1. There is no merit whatever in the plaintiff in error's first second and third assignments of error, and no Federal question is involved.

In Re Mann 32 Minn. 60.
Simon *vs.* Mann, 33 Minn. 412.
Bennet *vs.* Denny, 33 Minn. 530.

2 The fourth assignment of error is equally without merit, and is not a subject for review or discussion here, no such question having been raised or presented either to the Trial Court or to the Supreme Court of Minnesota, nor was such question passed upon by the Supreme Court of Minnesota (see record, pages 216, 217 and 218). But even if such question had been presented to the Supreme Court of Minnesota and been passed upon, then we claim that there is no real merit or substantial basis for such a claim, as the constitutionality of the Minnesota assignment or bankrupt act of 1881 has been sustained not only by the Supreme Court of Minnesota, but also by the Federal Courts.

Mather *vs.* Nesbit, 13 Fed. R. 347.
Weston *vs.* Layhed, 30 Minn. 222.
Wendell *vs.* Lebon, 30 Minn. 234.
Sloane *vs.* Chiniquy, 22 Fed. R. 213.

In this last case, which was in the United States Circuit Court for the district of Minnesota, and involved the constitutionality of the bankrupt act of Minnesota, of 1881, the same act as here called in question, the decision is by Justice Miller, and as it really covers every point attempted to be made by the plaintiff in error, under his fourth assignment, I desire to call the particular attention of the Court to it. As the Court say: "The case of Sloan against Chiniquy, was originally an attachment against Chiniquy, levied on his property by an order from this Court. It seems that the defendant availed himself of the statute of Minnesota, which enacts that in such a case the debtor in attachment may make an assignment of all his effects subject to execution for the benefit of all his creditors who will execute and file releases of their claims against him, and that the assignment shall be filed in the District Court of the State, and that the parties shall proceed about as in bankruptcy proceedings, dividing the property among those who shall prove their debts, and release him from further liability. The bill in the present case is filed against the assignee by the original plaintiff in this Court, to restrain any further proceedings under that assignment, and to declare the assignment void. The main argument in favor of declaring it void is that the statute iself is void; that the act of the legislature of the State of Minnesota upon that subject is forbidden by the provision of the constitution of the United States that

no state shall pass any law impairing the obligations of a contract." Here we have a decision which fully sustains the constitutionality of the insolvent act of Minnesota (chapter 148, laws 1881) and fully sustaining the decision of Judge Nelson in Mather *vs.* Nesbit, 13 Fed. R. 872.

12 Wheat. 213; 6 Pet. 643; 5 How. 295; 1 Wall 225; 1 Dill 515.

3. The fifth assignment of error is not well taken, and is without merit.

The record discloses the fact to be that while the property of the VanNormans (insolvents) was in their store, in the actual possession of the sheriff of Hennepin County, under the Purdy attachment, the plaintiff in error, as U. S. Marshal, attempted to take the same by virtue of a writ of attachment issued out of the United States Circuit Court for the District of Minnesota; that while the sheriff held said store, and the property in the same, under said attachment, the VanNormans (insolvents) duly assigned to the defendant in error all of their property for the equal benefit of all their creditors, in accordance with the insolvent act of 1881; that the defendant in error at once accepted said trust in writing, qualified, and entered upon the discharge of his duties, and the sheriff of said Hennepin County, upon demand of the assignee Bennet, then and there turned over to him the possession of the store, and all of the property of every kind belonging to the VanNormans; that Bennet had full and actual possession of the same as an officer of the District Court, and so continued for some hours, when the plaintiff in error, as U. S. Marshal, seized the same under the Lapp & Flershem writ of attachment, and with force and violence ejected the defendant in error from the store. Now, from the time of the execution and filing of the assignment by the VanNormans the property was "*in custodia legis.*"

Kingman *vs.* Barton, 24 Minn. 277.
Swan *vs.* Thomas, 26 Minn, 143.
In re Mann, 32 Minn. 60.

Property "*in custodia legis*" could not be levied upon by the U. S. Marshal.

Drake on Attachment, § 251 and § 267 (5th ed.)
Murfree on Sheriffs, § 269; In re Mann, 32 Minn. 60.

The act of 1881 provides for the dissolution of attachments upon the debtor's executing an assignment for the equal benefit of all of his creditors, (chapter 148, Laws 1881), and the same contingency which would dissolve an attachment in the State court would also dissolve it under the Federal laws.

U. S. Rev. Stat. sec. 933.
Mather *vs.* Nesbit, 13 Fed. R. 872.
Simon *vs.* Mann, 33 Minn. 412.
Wendell *vs.* Lebon, 30 Minn. 240.

The writ of Lapp & Flershem, under which plaintiff in error seized and held the property assigned by the VanNormans to

Bennet, defendant in error, constituted no justification for the detention of the property after notice of such assignment and demand by the assignee, and when the plaintiff in error levied upon the property then assigned and "*in custodia legis*," he became a trespasser, and as such liable for all damages thereby sustained, (25 Minn. 513), and such was the holding by Judge Nelson, in Lapp et al. *vs.* VanNorman & Bro., 19 Fed. R. 406, in which he says:

"*The writ of attachment properly issued against the debtor, and if the Marshal has seized property which belonged to Bennet (defendant in error), he is certainly liable in an action of trespass for damages thereby sustained.*"

The point attempted to be made by the plaintiff in error that refusal of the Court to dissolve the attachment constituted a judgment binding upon the defendant in error, is not well taken. The plaintiff in error having taken the assigned property from the defendant in error, the duly qualified assignee, by virtue of a writ of attachment issued out of the United States Circuit Court for the District of Minnesota, the defendant in error applied to the Circuit Court to be permitted to intervene in the action in which the attachment issued to become a party defendant therein, and for a dissolution of the attachment, and asking for an order upon the Marshal requiring him to return to the assignee the assigned property so held by him. Now the decision in Lapp & Flershem *vs.* VanNorman & Bro. on said motion and for leave to intervene, was not a decision on the merits, but merely an opinion, holding that, being a stranger to the record, he cannot move to dissolve the attachment, although as assignee of defendants he might be permitted to intervene for the purpose of contesting the alleged indebtedness of his assignors, and in this way take advantage of any right the assignee had to dissolve the attachment, and further, that the assignee's right to the attached property could not be determined on such a motion, but that he must resort to his action of tresspass to try title. The holding of Judge Nelson was simply that the defendant in error had mistaken his remedy in moving to dissolve the attachment, and is therefore no bar to this action.

Abbott's Trial Ev. p. 830, § 11.
Marsh *vs.* Armstrong, 20 Minn. 81.

That this was the view of Judge Nelson, is evidenced by the opinion in which he says: "On this statement of facts I shall not decide on this motion who has the better title and right to the possession of the property taken"; and then in another part, in which the following significant language is used: "*The writ of attachment was properly issued against the debtor, and if the marshal has siezed the property of Bennet he is certainly liable in an action of trespass for damages thereby sustained.*" (19 Fed. R. 406), and as the Court in Bennet *vs.* Denny, 33 Minn. 533, well says: "This contention over estimates the force and effect of the order refusing to dissolve an attachment. It was merely "the decision of a motion on summary application," which is not to be regarded in the light of *res. adjudicata* or as so far conclusive up-

on the parties as to prevent their drawing the same matter in question again in the more regular form of an action."

Kanne *vs.* Minn. & St. L. Ry. Co., 33 Minn. 419.

"It was a decision not upon a right of property, but upon the question whether upon the facts before the Court, an attachment should be dissolved. By becoming a party defendant to the suit in the Circuit Court, the plaintiff probably put himself in a position to contest the existence of the cause of action which was the subject of that suit. But that subject was not whether the attachment was valid and proper or not, or where the right of property in the attached goods was. *These questions he wasat entire liberty* to raise and litigate in any other proper tribunal. So far as we are able to discern these views are in entire harmony with Buck *vs.*Colbath, 3 wall 334, relied upon by defendant."

The decision is not, therefore, in any sense *res. adjudicata* as to any issue involved in the action.

A judgment is only conclusive "as to parties and privies, of facts directly in issue in the case actually decided by the Court, and appearing from the judgment itself to be the ground on which it was based."

Reynolds Stephen on Ev. art. 41 p. 65.

It is only where the point in issue has been determined that the judgment is a bar.

1st Greenl on Ev., sec. 529 p. 614 (14th ed.), also sec. 530, p. 615. 20 Minn. 81.

"A judgment is conclusive upon the parties thereto, only in respect to the grounds covered by it, and although a decree in express terms purports to affirm a particular fact or rule of law, yet if such fact or rule of law was immaterial to the issue, and the controversy did not turn upon it, the decree will not conclude the parties in reference thereto." (38 N. Y. 63.)

The judgment of the Supreme Court of the state of Minnesota should be affirmed, and a judgment ordered to be entered for the defendant in error.

AMBROSE N. MERRICK,
Attorney for Defendant in Error.

In the Supreme Court of United States.

THE TOWN OF DANVILLE, VA., Appellant,
vs.
J. WILLCOX BROWN AND OTHERS, Appellees,
No. 1109.

Brief of Counsel for Appellant.

WARE, DUKE & TAYLOR, PRINTERS, 1205 MAIN STREET, RICHMOND.

on the parties as to prevent their drawing the same matter in question again in the more regular form of an action."

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AMBROSE N. MERRICK,
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In the Supreme Court of United States.

THE TOWN OF DANVILLE, VA., Appellant,
vs.
J. WILLCOX BROWN AND OTHERS, Appellees,
No. 1109.

Brief of Counsel for Appellant.

WARE, DUKE & TAYLOR, PRINTERS, 1208 MAIN STREET, RICHMOND.

IN THE

Supreme Court of the United States.

THE TOWN OF DANVILLE, VA., Appellant,
vs.
J. WILLCOX BROWN AND OTHERS, Appellees,
} No. 1109.

BALTIMORE, *October* 31, 1888.

THE TOWN OF DANVILLE
vs.
J. WILLCOX BROWN AND OTHERS
} In the Supreme Court of the United States.

To Geo. C. Cabell, Esq., Attorney for the Town of Danville:

Please take notice that I shall on the 12th day of November, 1888, move in this case for an order vacating the *supersedeas*, for the reason that the bond was not filed within the time prescribed by statute.

FRANK P. CLARK,
Attorney for J. Willcox Brown and Others, Appellees.

On the 12th day of November, 1888, the counsel for appellees, for the *first* time filed with his "brief" the following motion:

"MOTION TO VACATE A SUPERSEDEAS."

"And now comes the appellees in the above cause, by Frank P. Clark, their attorney, and move the court to vacate the *supersedeas* in the above cause, or for an

order declaring that the appeal bond filed by the appellant in said cause does not operate as a *supersedeas*, because the said bond was not filed within sixty days after the entering of the final decree in this cause, nor was the permission of a justice or judge of the appellate court first had and obtained before the filing of the same.

FRANK P. CLARK,
Att'y for Appellees.

In support of the foregoing motion the appellees set out what purported to be portions of the record in this cause:

1. Bill of Complaint.
2. Answer of the Town of Danville.
3. Master's Report.
4. Final Decree.
5. Appeal Bond.
6. Citation.

Neither the appellant nor its counsel ever saw the motion as above set out, the statement of the parts of the record designed to be used, or the brief of counsel for appellees, until the morning of the 12th November, just as the Supreme Court convened; therefore the appellant's counsel were unwilling to proceed, and thereupon the Court adjourned the hearing of said motion to a future day.

And now the counsel for appellant say that the motion filed by counsel for appellees is not consistent with, but variant from, the notice served.

The notice is one of direct character, looking to the vacation of a *supersedeas* for a positive and particular reason. The motion is one in the alternative, in which the Court is asked, if there be a *supersedeas*, to vacate it; if there be none, then to so inform the parties and *declare* accordingly. If, as *we* hold, the bond given by the Town of Danville operates as a *supersedeas*, we agree that the Court might, for good cause and upon a proper showing,

vacate it. If, however, as the appellees hold, the bond was not executed in time, and not sufficient for the purposes for which executed, it does not operate as a *supersedeas*, and there is no *supersedeas* in the case, and the Court is asked to do a vain thing—viz., to vacate a *supersedeas* not in the cause.

The decree from which the appeal in this cause was allowed was rendered on the 29th day of March, 1888, in court at Lynchburg, Va., and concludes as follows:

"And the defendant, the Town of Danville, prays an appeal from the aforesaid decree in open court, and it is allowed, and, if a *supersedeas* is desired, the amount of the bond is fixed at one hundred thousand dollars."

A *supersedeas* was "desired," and the Town of Danville at different times executed three bonds, with ample security, each for $100,000. Two of these bonds, for reasons assigned by the circuit judge to whom they were presented, were rejected. The third was, on the 31st day of May, 1888, accepted and "approved," and on the 1st day of June, 1888, filed with the clerk of his court at Lynchburg.

The delay in filing this last bond, as we will show, was not in fact attributable to the Town of Danville, nor would it be held, we think, accountable or blameable therefor, even were the case different from what it is.

But was not the bond executed and filed within the time required by statute?

The Revised Statutes (United States, section 1007), provides that: "In any case where the writ may be a *supersedeas*, the defendant may obtain such *supersedeas* by lodging the copy of the writ for the adverse party in the clerk's office within sixty days (Sundays exclusive), and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterwards with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may

be a *supersedeas*, execution shall not issue until the expiration of ten days."

The law and the practice, with reference to writs of error and appeal by statute, are analogous.

The bond in this case was given, we contend, within the time required by statute. The citation was signed by the judge on the 31st day of May, and at once served upon the parties defendant in error. The bond was approved on the same 31st day of May, and filed with the clerk on the 1st day of June, 1888, within sixty days, "Sundays exclusive," as provided by the statute. Excluding Sundays, the Town of Danville had until the 6th day of June to file its bond. Yet we say, and the record proves it, the bond was in fact filed six days before.

The counsel for the appellees claims that Sundays are not excluded in the computation of the time within which the bond was executed. If that is so, then we must ignore the law, which he in one part of his brief well sets out, "that a perfect analogy exists between appeals and writs of error as to the time in which and the judge by whom they may be granted." In this case several (nine) Sundays intervened. In law Sunday is generally esteemed *dies non*, and, in consonance doubtless with this legal estimate, the statute alluded to, in its first clause, distinctly and in *ipsissimis verbis*, excludes Sundays. The second clause relates to matters of the same character and like import, but omits the words "Sundays exclusive." Both clauses, however, point to the same or a similar object; both require the service of process or its equivalent, and both require security to be given within "sixty days"—sixty legal days. That the two clauses or parts of the section were intended to be construed after the same manner; that the words "Sundays exclusive" were intended to apply as well to the second as to the first clause or part of the statute, we do not doubt. The use of the words "Sundays exclusive" in the first part of the statute was merely, we think, to give emphasis to the theory that "Sunday is no day in law," which, by implication, would necessarily attach to

and follow the "sixty days" mentioned in the second part. As an evidence that the Congress which passed this statute was liberal in its views as to the time to be allowed in which security might be given, it not only provided that the required security might be given within sixty days after the rendition of the judgment (decree in this case), but "afterwards with the permission of a justice or judge of the appellate court." The object seems to have been to grant the amplest time, to give not only the "sixty days, Sundays excluded," but any time afterwards within two years, and the discretion of a justice or judge of the appellate court in cases in which the transcript of the record had been properly sent up and to the proper term. (Revised Stat., § 1007.)

A reading of the 11th section of the act of June —, 1872, embodied now in section 1007, Revised Statutes, makes clear the intention of Congress in this behalf.

Mr. Phillips, in the last edition of his "Supreme Court Practice," says: "By the 11th section of the act of June, 1872, it was provided that any party or person desiring to have any judgment, decree, or order of any district or circuit court reviewed on writ of error or appeal, and to stay proceedings thereon during the pendency of such writ of error or appeal, may give the security required by law therefor within sixty days after the rendition of such judgment, decree, or order, or afterward with the permission of a justice or judge of the said appellate court. Section 1007, Rev. Stat.," *he* adds, "which embodies this section, excludes Sundays." (Phillips, page 153.)

Again, on page 154, the same author says: "The new act gave to parties desiring to 'stay proceedings' sixty days to give the security required by law." It goes further, and permits the security to be given afterward "with the permission of a justice or judge of the appellate court."

Some weight certainly, it seems, should be attached to the action of the circuit judge in this case. He knew all the facts, it should be presumed that he

knew the law, and he gave evidence of his construction of his duty and the law when he accepted the bond tendered by the Town of Danville and ordered citation to issue all within sixty days, "Sundays excluded." (Martin *v.* Hunter, 1st Wheaton, 304.)

We are not, however, left to conjecture altogether in reference to this matter.

In the case of Kitchen *v.* Randolph the Supreme Court decided that "unless an appeal is perfected or a writ sued out and served within sixty days (*Sundays exclusive*) after the rendition of the decree or judgment complained of, it is not within the power of a justice of this court to allow a *supersedeas*." (3d Otto, 867, &c.)

If the appeal taken by the Town of Danville was perfected within sixty days, "Sundays exclusive," as was done, then all that could have been required of the appellant was done.

In more than one decision of this Court the terms "allowance" and "perfecting" an appeal are used as synonymous.

The words "taking" and "perfecting" of an appeal mean the same thing as "allowed." (Phillips, page 157.)

Danville's appeal then was "allowed" and "perfected" in open court by decree of 29th March, 1888, and the security required properly given within sixty days, "Sundays exclusive," as sanctioned by the action of the Court in Kitchen *v.* Randolph, cited above.

The prayer for an appeal and its allowance by the Court below constitutes a valid appeal, though no bond be given (the bond being to be given with effect at any time while the appeal is in force). (Edmondson *v.* Bloomshire, 7th Wallace, 306.)

The Court accepted and approved the bond after the decree of 29th March, 1888, and when accepted and approved it had relation back to the time of the allowance of the appeal. (The Dos Hermanos, 10th Wheaton, 306; Seward *v.* Comeau, 102 U. S. Reports, 161.)

It is needless to cite very many authorities in a case

of this character. Cases similar have no doubt been frequently before this Court of late years.

If there should be any doubt as to the right of Judge Bond to take the security or bond complained of, then we respectfully ask this Court to grant such order as will permit the appellant to give a new bond, with any security required, within any given time. Danville desires the *supersedeas* in this case to be kept in full force.

Upon such grounds as the appellees suggest the Supreme Court has often declined to dismiss appeals.

In Peugh *v.* Davis the Court said: "If a court in session and acting judicially allow an appeal which is entered of record, without taking a bond in *sixty* days after rendering a decree, a justice or judge of the appellate court may in his discretion grant a *supersedeas* after the expiration of that time under Revised Statutes, 1007." (110 U. S. Reports, 227; O'Reily *v.* Edrington, 96 U. S. Reports, 724.)

In Seymour *v.* Freer, 5th Wallace, 822, the Court said: "Where, through mistake or accident, no bond, or a defective bond, has been filed, the Court will not dismiss the appeal, if it was in all other respects quite regular, except on failure to comply with an order to give the proper security within such reasonable time as it may prescribe." And so in Brobst *v.* Brobst, 2d Wallace, 96, 97, "a party was allowed to enter an appeal bond *nunc pro tunc* where the solicitor had been misled." See also Anson *v.* Blue Ridge R. R. Co., 23d Howard, 1; 3d Otto, 412.)

In this case the Town of Danville earnestly endeavored to give the required bond, and actually presented three bonds, each of which, with all respect to the learned judge of the circuit court who thought differently as to the two first, we still believe were sufficient in all essentials. The appellant, therefore, was in no default. (See affidavit of W. T. Harris and exhibits; see also Sage *v.* Railroad Company, 93 U. S. Reports, 417; see also Spalding *v.* New York, 2d Howard, 66.)

In a case in this court wherein it was alleged that the

bond was not given in time Justice Miller, delivering the opinion of the Court, said: "The answer to this is that the prayer for the appeal and the order allowing it constituted a valid appeal. The bond was not essential to it. It could have been given here and cases have been brought here where no bond was approved by the court below, and the court has allowed the appellant to give bond in this court." (Edmondson *v.* Bloomshire, 7th Wall., 311, citing 5th Wallace, 188; *Id.*, 822; Dodge *v.* Knowles, 114 U. S. Reports, 430.)

In another case in which "appeal was allowed out of term," not dismissed. Dayton *v.* Lash, 94 U. S. Reports, 112; National Bank *v.* Bank of Commerce, 99th U. S. Reports, 608.)

In still another case this Court decided that "the signing of a citation, returnable to the proper term of the court, but without acceptance of security, nevertheless constitutes an allowance of appeal which enables the court to take jurisdiction and affords appellants the opportunity to furnish the necessary security here." (Brown *v.* McConnell, 124 U. S. Reports, 489; see also Hewitt *v.* Filbert, 116 U. S. Reports, 116.)

In Stuart *v.* Matterson, 124 U. S. Reports, 493, where *no* bond was filed, on motion to dismiss, held "that motion be granted unless appellant, before a day fixed by the court, should file bond before the clerk of this court, with sureties, to the satisfaction of the justice allotted to the circuit."

None of those cases, we respectfully submit, were as strong as that of the Town of Danville, which we represent. In this case the appeal was allowed in open court, citation signed and executed, and bond accepted and approved within sixty days (Sundays excluded), and notwithstanding what we have said in regard to the dismission of cases of appeal, and cases cited which we think bear upon the case here presented, we are still of the opinion that the appeal taken by the Town of Danville comes clearly within the provisions of section 1007 of Revised Statutes, and that the bond given by the

Town of Danville was given and approved in ample time and operates as a *supersedeas* in this cause, and we are fortified in this construction of the law by the language of Chief-Justice Waite in delivering the opinion of the Court in a case hereinbefore cited, when he said: "We are therefore of opinion that under the law as it now stands the service of a writ of error or the perfection of an appeal within sixty days (SUNDAYS EXCLUSIVE) after the rendition of the judgment or the passing of the decree complained of is an indispensable prerequisite to a *supersedeas*. * * *" (Kitchen *v.* Randolph, 93d U. S. Reports, page 92.)

We do not propose to answer at length the argument of the learned counsel for the appellees, especially a great portion of it set out on pages 33, 34, 35, 36 of his brief. Much of that, it seems, would apply better to the argument of the cause upon its merits, which we will not attempt to discuss here.

This is a motion merely to vacate the *supersedeas* in the cause, upon the ground that "the bond was not given in time," and it was only necessary to place before the court the date of entry of the decree complained of, the bond with the order of the circuit judge approving it, the date of its approval and when filed, and possibly the citation. All besides "but cumbers the record," and must have been intended for another purpose.

If the appellees are right in their contention that the bond given by the Town of Danville "was not given in time and does not operate as a *supersedeas*, then they have no case here, and their motion must be dismissed. If, however, as we contend, the bond *was* given in time, then they are likewise "out of court" upon their notice and motion. (Western Air-Line Co. *v.* McGillis, 127 U. S. Reports, 776, 777.)

The counsel for the appellees in his brief (pages 33, 34) says: "The record discloses that the case is not one for a *supersedeas* at all; that the pending appeal fully secures to the appellant all its rights; that no possible advantage to it can be derived, directly or indirectly,

immediately or remotely, from the *supersedeas;* that the effect of the *supersedeas* will be only to keep the property in the hands of the receiver to the detriment of all parties interested in it, and particularly to the holders of the junior bonds; and, finally, that this application for a *supersedeas* is but a vexatious proceeding intended to be used to force a compromise which the legal rights of the parties do not warrant."

To this strong language—this assumption of counsel—it is enough to say that the case *is* one for a *supersedeas*, and the voluminous record, of which the Court cannot now take notice, when printed, will show it. The pending appeal, *without* the *supersedeas*, will not secure to the appellant all of its rights, and in its estimation and that of its counsel direct, immediate, and proximate advantages are to be legally and properly derived to the Town of Danville from the *supersedeas*. The keeping of the property in the hands of the receiver *will not* tend to the "detriment of *all* parties interested in it." The Town of Danville, "prior in time and in right" to the appellees, is deeply interested in keeping the property involved from sale until the rights of all parties can be adjudicated and determined under the appeal taken. In point of fact it is not true that "the application for a *supersedeas* in this case is 'a vexatious proceeding,' intended to be used to force a compromise which the legal rights of the parties do not warrant." Such argument could hardly be of avail in this court, upon the hearing of a mere motion, without evidence, record, or otherwise to warrant it.

The Town of Danville took its appeal in good faith. It believed in the justice of its cause; that the Circuit Court erred in rendering the decree complained of, and that the appellate court, upon proper examination, would do justice between all parties.

"It does not lie in the mouths" of the appellees in this cause, who took their deeds or mortgages *after and in subordination* to the claims of the Town of Danville, to complain of Danville for asking that "execution be

stayed" until the cause can be investigated by the proper tribunal and justice done. The appellees are in no danger; they are amply protected by the large bond required of the Town of Danville, and the property is being preserved and worked under the orders of the Circuit Court. We do not doubt, however, but that anything done by Danville in preservation of its rights would be held a "vexatious proceeding" by the appellees.

The counsel for the appellees in his brief says: "The appellant is a *preferred stockholder*, and has no rights superior to the common stockholders, except that whenever there may be any *net earnings* it is entitled to be paid its dividend at the rate of six per centum per annum *in preference* to the payment of the interest under the second and third mortgages."

Just here, if we were arguing the merits of the case, and the second and third deeds of trust or mortgages, under which the appellees claim, together with the remainder of the record, were before the court, we might well pause and ask judgment. What *earnings*, either *net* or otherwise, would remain to Danville, or any other party in prior or like interest, if the property involved should be taken up and sold out in behalf of appellees, who took with full knowledge of the prior rights of Danville and others?

Again, counsel for appellees says: "It [Danville] has no preference as to such dividends, or in any other way, over the first-mortgage bondholders."

As we understand it, the first-mortgage bondholders are not interesting themselves in this contention; they seem to be standing off, content with their position. It is only the second and third-mortgage bondholders, if indeed all of them, who are endeavoring to deprive Danville of its rights, to the end, apparently, that they may prematurely realize upon their investments or drive a good bargain in the purchase of a property cumbered with debt and litigation.

We will not further follow the counsel for the appel-

lees in his argument, beyond the legitimate scope of his motion. The remainder of his argument—indeed part of that which we have endeavored to answer—might, perhaps, we respectfully suggest, be pertinent upon argument of the *merits* of this cause—not to this motion.

Not until the record has been printed, including the several deeds of trust or mortgage, the exhibits, reports, proofs, &c., and laid before the court, can your Honors, in our humble judgment, reach a proper conclusion in the matters involved in this litigation. (National Bank *v.* Insurance Co., 100 U. S. Reports, 43.)

We therefore respectfully ask that the motion of appellees be dismissed, and the Town of Danville sustained in its position, until a final hearing of this cause upon its merits.

GEO. C. CABELL,
H. H. MARSHALL,
For Appellant.

Supreme Court of the United States,

OCTOBER TERM, 1888.

No. 1,109.

THE TOWN OF DANVILLE, APPELLANT,

vs.

J. WILLCOX BROWN AND OTHERS, APPELLEES.

Brief on Motion to Vacate Supersedeas.

FRANK P. CLARK,
Attorney for Appellees.

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FRANK P. CLARK,
Attorney for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

THE TOWN OF DANVILLE,

APPELLANT,

vs.

J. WILLCOX BROWN, AND OTHERS,

APPELLEES.

No. 1,109.

MOTION TO VACATE A SUPERSEDEAS.

And now come the Appellees in the above cause, by Frank P. Clark, their attorney, and move the Court to vacate the *supersedeas* in the above cause, or for an order declaring that the appeal bond filed by the Appellant in said cause does not operate as a *supersedeas;* because the said bond was not filed within sixty days after the entering of the final decree in this cause, nor was the "permission of a Justice or Judge of the Appellate Court" first had and obtained before the filing of the same.

FRANK P. CLARK,
Attorney for Appellees.

In support of the foregoing motion the Appellees file the following portions of the record in this cause.

1. BILL OF COMPLAINT.
2. ANSWER OF THE TOWN OF DANVILLE.
3. MASTER'S REPORT.
4. FINAL DECREE.
5. APPEAL BOND.
6. CITATION.

1. BILL OF COMPLAINT.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

Your Orators, J. Wilcox Brown, of Baltimore, and a citizen of the State of Maryland, Charles D. Lowndes, of Baltimore, and a citizen of the State of Maryland, and Frank T. Redwood, of Baltimore, and a citizen of the State of Maryland, trading and doing business as Brown & Lowndes, Basil B. Gordon, of Baltimore, and a citizen of the State of Maryland, and George C. Jenkins, of Baltimore, and a citizen of the State of Maryland, Joseph W. Jenkins, Jr., of Baltimore, and a citizen of the State of Maryland, Michael Jenkins, of Baltimore, and a citizen of the State of Maryland, (the last three trading and doing business as Jenkins Brothers,) T. Nelson Strother, of Baltimore, and a citizen of the State of Maryland, Joseph W. Jenkins, Sr., of Baltimore, and a citizen of the State of Maryland, John A. Tompkins, of Baltimore, and a citizen of the State of Maryland, Edward B. Bruce, of Baltimore, and a citizen of the State of Maryland, Frank P. Clark, of Baltimore, and a citizen of the State of Maryland, Charles D. Fisher, of Baltimore, and a citizen of the State of Maryland, Ivan M. Proctor, of Baltimore, and a citizen of the State of Maryland, Graham Gordon, of Baltimore, and a citizen of the State of Maryland, Frederick Von Versen, of Baltimore, and a citizen of the State of Maryland, Edward Worthington, of Baltimore, and a citizen of the State of Maryland, Robert Hodges, of Baltimore, and a citizen of the State of Maryland, George H. Courson, of Baltimore, and a citizen of the State of Maryland, Henry R. Crane, of Baltimore, and a citizen of the State of Maryland, Olivere Andrews, of Baltimore, and a citizen of the State of Maryland, D'Courcy W. Thom, of Baltimore, and a citizen of the State of Maryland, Harry B. Whiteley, of Baltimore, and a citizen of the State

of Maryland, (the last two trading and doing business as Thom & Whiteley,) for themselves and for all other bondholders who may become parties complainants hereto and shall contribute to the cost of this proceeding, bring this their bill against the *Danville & New River Railroad Company*, a corporation created, organized and established under and by virtue of the laws of the State of Virginia and a citizen of the State of Virginia, and *George D. Gravely*, of Henry County, and a citizen of the State of Virginia, and *Berryman Green*, of the town of Danville, and a citizen of the State of Virginia, and the *Town of Danville*, a citizen of the State of Virginia.

And thereupon your Orators complain and say:

1st. That the Danville & New River Railroad Company was duly incorporated by the General Assembly of the State of Virginia by an Act approved March 20th, 1873, chapter 286, the title of which is "An Act to incorporate the Danville & New River Railroad," and by an Act amendatory thereof approved March 20th, 1877, chapter 172 entitled "An Act to amend and re-enact section 1 of an Act entitled an Act to incorporate the Danville & New River Railroad," and has constructed and equipped, owns and operates, a railroad beginning at the City of Danville, in the State of Virginia, and extending to the Station of Stewart, in the County of Patrick, in the same State, in all seventy-five miles more or less, and has established and maintains its principal office in the City of Danville, aforesaid. Copies of the two several Acts of the General Assembly of the State of Virginia, under the authority of which the said Danville & New River Railroad constructed and equipped, owns and operates its road in the said State are hereto annexed marked exhibits A and B, and your Orators crave that they may be taken as part of this Bill of Complaint, as if the same were fully and at large set forth herein.

2nd. That in pursuance of the power and authority vested in the said Danville & New River Railroad Company, the said company, with the consent of its stockholders in general meeting assembled and in due form of law, on or about the 1*st day of July*, 1881, executed and delivered to George D.

Gravely and Berryman Green, as trustees, a deed of trust or mortgage, bearing date the 1st day of July, 1881, granting and conveying to the said trustees, all the road-bed, rights, liberties, privileges, corporate franchises, real and personal property, income, tolls and receipts of that division of the railroad of said company situated between Dundee, in the town of North Danville, county of Pittsylvania, and State of Virginia, and Martinsville, in the county of Henry, in the same State, known as the *Eastern* division of the said road, now held or hereafter to be acquired, which said mortgage or deed of trust is known as the Eastern division mortgage, a copy of which is herewith filed and marked Complainants' Exhibit, C, and your Orators crave that the same may be taken as a part of this bill as if the same were fully and at large set forth herein. That there are outstanding and unpaid, secured by the said mortgage, six per cent. bonds amounting to the sum of two hundred thousand dollars.

3rd. That in pursuance of the power and authority vested in the said Danville & New River Railroad Company, the said company, with the consent of its stockholders in general meeting assembled and in due form of law, on or about the 15*th day of September*, 1883, executed and delivered to George D. Gravely and Berryman Green as Trustees, a Deed of Trust or mortgage, bearing date the 15th day of September, 1883, granting and conveying to the said Trustees, all the road-bed, rights, liberties, privileges, corporate franchises, incomes, tolls, receipts, rolling stock, and real and personal property whatsoever of that division of the railroad of said company, situate between the junction of that branch of said railroad leading to Martinsville and the main track of said railroad leading to Martinsville and the main track of said railroad about one-quarter of a mile East of Martinsville aforesaid, in the County of Henry and State of Virginia, and Patrick Court-house in Patrick County in the same State, known as the *Middle* division of the Danville & New River Railroad, now held or hereafter to be acquired, including herein all contracts of said company whatsoever with other companies or corporations and all rights and remedies under or by reason of the same, together with all the road-bed, rights, liberties,

privileges, corporate franchises, incomes, tolls and receipts, rolling stock and real and personal property of that division of the railroad of said company, situate between Dundee in the town of North Danville, County of Pittsylvania and State of Virginia, and Martinsville in the County of Henry in the same State, known as the Eastern division of the Danville & New River Railroad now held or hereafter to be acquired, which said mortgage or Deed of Trust is known as the Middle Division Mortgage, a copy of which is herewith filed and marked Complainants' Exhibit D, and your Orators crave that the same may be taken as part of this bill as if the same were fully and at large set forth herein.

That there are outstanding and unpaid, secured by the said mortgage, six per cent. bonds amounting to the sum of two hundred and fifty thousand dollars.

4th. That in pursuance of the power and authority vested in the said Danville & New River Railroad Company, the said company, with the consent of its stockholders in general meeting assembled and in due form of law, on or about the 15*th day of February*, 1884, executed and delivered to George D. Gravely and Berryman Green as Trustees, a Deed of Trust or mortgage, bearing date the 15th day of February, 1884, granting and conveying to the said Trustees, all the road-bed, rights, liberties, privileges, corporate franchises, real and personal property, income, tolls, receipts and rolling stock of that division of the railroad of said company between Patrick court-house aforesaid and the Western terminus thereof, whether in Virginia or North Carolina or both, to be known as the Western division of the Danville & New River Railroad, now held or hereafter to be acquired, together with all the road-bed, rights, liberties, privileges, corporate franchises, incomes, tolls, receipts, rolling stock and real and personal property of the Eastern and Middle divisions of said Danville & New River Railroad, now held or hereafter to be acquired, and all contracts of said company whatsoever, which said mortgage or Deed of Trust is known as the *Western* division mortgage, a copy of which is herewith filed and marked Complainants' Exhibit E, and your Orators crave that

the same may be taken as part of this bill as if the same were fully and at large set forth herein.

That there are outstanding and unpaid, secured by the said mortgage, six per cent. bonds amounting to the sum of two hundred and fifty thousand dollars.

5th. That the said Danville & New River Railroad Company made *default* of the semi-annual interest coupons, amounting to seven thousand five hundred dollars, falling due *August 15th*, 1886, upon the said *Western* division bonds secured by the Deed of Trust of February 15th, 1884, and made application to the bondholders for indulgence, whereupon indulgence was granted the said company upon condition that one-half of the coupons so in arrears should be paid, and upon the further condition that the road should maintain a management satisfactory to the bondholders, which agreement was in writing duly signed and executed, a copy of which is herewith filed marked Complainants' Exhibit F, and your Orators crave that the same may be taken as a part of this bill as if the same were fully and at large set forth herein.

And your Orators charge that the said company has wholly disregarded and neglected to fulfil that portion of the said agreement which requires them to maintain a management satisfactory to the bondholders, and that the present management is not satisfactory nor is there any assurance that the agreement will be observed in the future by the company.

And your Orators further say that the said Danville & New River Railroad Company made *default* in the payment of the semi-annual coupons, amounting to *seven thousand five hundred dollars*, falling due *November 1st*, 1886, upon the said *Middle* division bonds, secured by the said Deed of Trust or mortgage of September 15th, 1883, all of which coupons your Orators charge are still wholly due and unpaid, said company being unable to pay the same. That the said company is hopelessly insolvent and unable to pay its debts. That it is in default of a large floating debt which it is unable to pay. That it is indebted to the banking firm of Brown & Lowndes on a promissory note to the amount of two thousand four hundred and ninety dollars which fell due on the day of 188 , and for which the said Brown & Lowndes hold past due

coupons as collateral, and which promissory note remains due and unpaid, and the said Corporation Defendant is liable to have its property scattered, disintegrated and sacrificed under process taken by independent classes of creditors to the irreparable damage of the bondholders secured by the said Deeds of Trust, and the other creditors of the company, and to have its functions as a public carrier impeded and arrested, to the great inconvenience and damage of the public.

6th. That the powers conferred upon the Trustees in case of default, refusal, neglect or omission on the part of the said Defendant Corporation for a period exceeding three months, to pay or cause to be paid the semi-annual instalment of interest, according to the tenor of the coupons must be construed to be cumulative remedies additional to all other remedies allowed by law, and that the same cannot be held to deprive your Orators or any other bondholders or beneficiaries under said Trust Deed or mortgages, of any legal or equitable remedy which it is competent for a Court of Equity to afford.

7th. That your Orators Complainants own one hundred and thirty-six thousand dollars of the bonds secured by the mortgage or Trust Deed known as the Middle Division Mortgage, and two hundred and three thousand four hundred and ninety dollars of the bonds secured by the mortgage or Trust Deed known as the Western Division Mortgage.

8th. That under these circumstances the interference of a Court of Equity for the enforcement and protection of the rights of your Orators and of all other bondholders secured by the three Deeds of Trust aforesaid is imperatively required, and especially for the immediate appointment of a receiver to take charge of, keep and preserve the railroad property and franchises of the said railroad company Defendant, to continue its business, and receive and properly appropriate its income until the final decree of the Court in the premises.

Your Orators pray for equitable relief as follows:

First. That the rights of your Orators and of the several classes of mortgage bondholders of the said railroad company in and to the railroad property, real and personal, and franchises of the said railroad company, mortgaged and conveyed to secure the said bonds, and of all having liens upon the said railroad property and franchises may be ascertained and defined and their priorities determined.

Second. That a receiver may be appointed, with full power and authority to demand, sue for, collect, receive, and take into his possession the goods, chattels, rights, credits, moneys and effects, lands, tenements, books, papers and property of every description belonging to the said railroad company Defendant, and that said receiver may receive from the said Court, in addition to the ordinary powers possessed by such receivers, full power and authority to manage, run and operate said railroad and premises, and to preserve and protect the corporate franchises, privileges and property, and to preserve the corporate existence of the said Danville and New River Railroad Company Defendant, and to preserve said railroad and property from being sacrificed under any proceeding which can or may be taken, and would be likely to prejudice or sacrifice the same, and that an injunction may issue against the said Defendant Corporation and against the said Defendants, George D. Gravely and Berryman Green, and the said Defendant the town of Danville and all persons claiming to act by, through or under them or either of them; and all other persons, to restrain them from interfering with the said receiver's taking possession of and managing the said property, and that your Orators may have such further general relief in the premises as the nature of the case may require, and as may be agreeable to equity.

Third. That the amounts due upon the bonds, principal and interest, intended to be secured by the said Deed of Trust of July 1st, 1881, September 15th, 1883, and February 15th, 1884, be, at such time and in such manner as the Court shall direct ascertained and determined; that a decree be entered directing the Defendant, the Danville and New River Railroad Company, to pay what shall appear to be due upon tak-

ing account by a short day to be named by the Court; that in default of such payment, it be decreed that the Danville and New River Railroad Company, and all persons claiming under it, be absolutely barred and foreclosed of and from all right of equity of redemption in and to said premises, and that a decree of this Court be entered directing the sale of the whole mortgaged premises by such master or other officer or person, in such manner, at such time, and on such terms, and that the purchase money be paid and adjusted or settled as the Court may direct, appoint or deem proper.

Fourth. That your Orators may have such other and further relief in the premises as the nature of the case may require and the Court may deem proper.

Fifth. That the writ of subpœna may be granted to the Plaintiffs, to be directed to the said the Danville and New River Railroad Company Defendant, the said George D. Gravely, Defendant, the said Berryman Green, Defendant, and the said the town of Danville, Defendant, thereby commanding them and each of them at a certain day to be and appear before the said Court, and then and there full, true, direct, and perfect answers make to all and singular the premises, and further to perform and abide by such further orders, direction and decree therein as to the said Court shall seem meet.

And your Orators will further pray,

FRANK P. CLARK,
Solicitor for Complainants.

State of Maryland, City of Baltimore,

I, Charles P. Gallagher, a Notary Public in and for the City of Baltimore and State of Maryland, do hereby certify that J. Willcox Brown, one of the Complainants in this cause personally appeared before me this day and made oath that the statements therein, so far as stated on his own knowledge are true, and those stated on information, he believes to be true.

In testimony whereof, I have hereunto set my hand and Notarial seal this 11th day of November, 1886.

****
* SEAL *
****

(Signed,) CHAS. R. GALLAGHER,
Notary Public.

2. ANSWER OF TOWN OF DANVILLE.

UNITED STATES of AMERICA.
WESTERN DISTRICT of VIRGINIA.

In the Clerk's Office of the Circuit Court of the United States for the Western District of Virginia, at Lynchburg, on the 3rd day of January, 1887.

The following answer with exhibit was this day received in said office and filed to wit:

The answer of the Town of Danville to the bill of complaint exhibited against the Danville and New River Railroad Company, the Town of Danville and others in the Circuit Court of the United States for the Western District of Virginia at Lynchburg, Va., by Brown and Lowndes, and als., creditors of said Railroad Company.

This respondent saving, &c., says for answer, to so much of said bill, as it is material it should answer, that this respondent is the owner of six hundred shares, aggregating $60,000.00 of preferred stock, in the Danville and New River Railroad Company, which was issued to this respondent on the 14th August, 1882, that the terms, conditions and covenants upon which this respondent took said stock in said road were, that the Danville and New River Railroad Company, would and should pay to this respondent upon said stock, a semi-annual dividend of three per cent., out of the net earnings of the road, in preference to all other stock, and any mortgage, deeds of trust and other liens or incumbrances whatsoever, created after 16th March, 1882.—All of this will fully appear from a copy of the certificate which your respondent holds for said stock herewith exhibited as Town of Danville; as a part of this answer. Respondent states that the sum that has accrued due to it, as dividends on this stock, aggregates to the 14th August, 1886, $14,000.00; that your respondent has only received $1800—that can be justly claimed as a credit on said

sum, that the residue of it is justly due your respondent, and that your respondent is entitled to have same, and any like dividends, that accrue due on said stock to it, paid out of the net earnings of said Railroad Company, whether heretofore or hereafter made, in preference to any interest or other payments on other debts secured by mortgages, deeds of trust, or any other lien or incumbrance whatsoever, since the 16th March, 1882, including the debts secured, by the mortgage of 15th September, 1883, and 15th February, 1884, of which it is alleged in the bill that complainants hold and own a large amount.

Respondent believes, and hence charges, that although the dividends to which it is entitled under the terms of said stock are only to be paid out of the net earnings of the road, yet these earnings have been sufficient, to have paid these dividends in full, or if not in full, certainly to a very much greater extent than the $1800 before alluded to, if they had been devoted to that purpose, as they should have been, and as your respondent was entitled to expect would have been done.

Respondent believes and hence charges, that these earnings which rightfully should have been applied to paying its dividends on its preferred stock aforesaid, have been diverted and applied by the company to paying interest on debts secured by mortgage after the 16th March, 1882, and to other debts to the detriment of this respondent, and this respondent prays that it may be ascertained, in this cause, if this be so, and if so, that such action may be taken in reference thereto, as will put respondent in possession of its rights in reference thereto. Your respondent has done nothing to waive or relinquish its rights to its dividends under said stock and it prays that they may be ascertained and fixed and protected in this cause and required to be paid, and may all its rights under said stock be preserved and protected for this respondent.

Respondent has twice entered into agreements of compromise with said Railroad Company, once to accept a less sum than had accrued due to it as dividends on said stock, provided the less sum should be paid, within a specified time, and the other to extend the time for the road to make payment of the dividends upon certain conditions being complied

with, but the said Railroad Company have failed to comply with and keep any and all of these agreements, and conditions, so that they are no longer in force, and your respondent's rights are to be determined by the terms and conditions set out in said certificate of stock itself, and this respondent asks may be done, and now having fully answered, &c., respondent prays to be herein dismsssed with its costs, &c.

R. V. BARKSDALE,
Mayor of the Town of Danville.

EXHIBIT.

A Copy of Danville and New River Railroad Stock owned by the Town of Danville.

No. 18. 600 Shares.

DANVILLE AND NEW RIVER RAILROAD CO.,
OF VIRGINIA.

This is to certify that the town of Danville is the owner of Six hundred Shares of One hundred Dollars each in the Capital Stock of the Danville and New River Railroad Company. Transferable only on the books of the Company, in person or by attorney duly authorized.

Which said Stock is preferred in accordance with the order of the Hustings Court of the Town of Danville made at its July term, 1882, and said Danville and New River Railroad Company, covenants that out of the net earnings of the Danville and New River Narrow Gauge Railroad, the holder of this certificate shall be entitled to receive a semi-annual dividend of Three per centum in preference to all other stock, and any mortgage deeds of trust and other liens or incumbrances whatsoever, created after the 16th day of March, 1882.

Witness the signatures of the President and Treasurer, and seal of the Company at Danville, Va., this 14th day of August, A. D. 1882.

Danville and New River Railroad Company, Virginia.

G. K. GRIGGS, *Treasurer.* W. T. SUTHERLIN, *President.*

A Copy, Teste: JOHN A. SMITH,
Clerk of Council.

A Copy, Teste:
WYATT M. ELLIOTT, *Clerk.*

3. MASTER'S REPORT.

UNITED STATES CIRCUIT COURT.
WESTERN DISTRICT OF VIRGINIA.

J. WILLCOX BROWN, *et al.*
vs.
THE DANVILLE AND NEW RIVER RAILROAD COMPANY, *et als.*

MASTER'S OFFICE, *Richmond*, *August 6th*, 1887.

TO THE HON. JUDGES OF SAID COURT:

In obedience to the order entered in this cause on the 25th day of March, 1887, a copy of which is returned herewith, the undersigned specially appointed Master thereby, proceeded after due notice, to take the depositions also returned herewith: and upon these depositions, the books of the Company, and the papers filed in the cause, begs leave respectfully to report:

1st. LIENS UPON THE ROAD.

The liens existing upon the said Railroad Company's property and franchises are in the order of their priority as follows:

(*A*) A deed of trust executed July 1st, 1881, conveying to Geo. D. Gravely and Berryman Green, Trustees, all the roadbed, rights, liberties, privileges, corporate franchises, real and personal property, income, tolls and receipts of that division of the Railroad of said Company situate between Dundee in the Town of North Danville, County of Pittsylvania and State of Virginia, and Martinsville in the County

of Henry in the same State, known as the Eastern Division of the Danville and New River Narrow Gauge Railroad, now held or hereafter to be acquired, in trust to secure the payment of Bonds of the Company to the amount of $200,000, dated July 1st, 1881, payable 30 years after date, with six per cent. interest.

Under this deed there was due on the 1st of July, 1887, unpaid interest on the mortgage amounting to $18,000.

(*B*) A Deed of Trust executed September 15th, 1883, conveying to Geo. D. Gravely and Berryman Green, Trustees, all the road-bed, rights, liberties, privileges, corporate franchises, incomes, tolls, receipts, rolling stock and real and personal property whatsoever of that division of the railroad of said Company, situate between the junction of that branch of said railroad leading to Martinsville and the main track of said railroad about one-quarter of a mile east of Martinsville aforesaid, in the County of Henry and State of Virginia, and Patrick Court House in Patrick County in the same State, known as "the Middle Division of the Danville and New River Narrow-Gauge Railroad" now held or hereafter to be acquired, together with all the rights, property and franchises of that division of said Railroad known as the "Eastern Division," in trust to secure the payment of Bonds of the Company issued under said Deed to the amount of $250,000, payable 30 years after date with six per cent. interest.

This mortgage is a first lien upon what is known as the Middle Division of the Road and a second lien upon the Eastern Division.

Under this deed there was due on the 1st of May, 1887, unpaid interest on the mortgage amounting to $15,000.

(*C*) A Deed of Trust executed February 15th, 1884, conveying to Geo. D. Gravely and Berryman Green, Trustees, all the road-bed, rights, liberties, privileges, corporate franchises, real and personal property, incomes, tolls, receipts and rolling stock of that division of the railroad of said Company between Patrick Court House in the County of Patrick and State of Virginia and the Western Terminus thereof, whether in Virginia or North Carolina or both, to be known

as the "Western Division of the Danville and New River Narrow Gauge Railroad," now held or hereafter to be acquired, together with all the rights, property and franchises of the Eastern and Middle Divisions of said Danville and New River Narrow Gauge Railroad now held or hereafter to be acquired in trust to secure the payment of bonds of the Company issued under said deed to the amount of $250,000, payable 36 years after date, with six per cent. interest.

This mortgage is a first lien on the Western Division of the road, a second lien on the Middle Division and a third lien upon the Eastern Division.

Under this deed there was due on the 15th of February, 1887, unpaid interest on the mortgage amounting to $13,740.

The foregoing are all the liens upon the property and franchises of the Company, in their order of priority, with the unpaid interest to the last date when payments were due.

A Lien on "Earnings."

The Town of Danville is the owner of 600 shares of stock of the Company, "which said stock is preferred in accordance with the order of the Hustings Court of the Town of Danville, made at its July term, 1882; and said Danville and New River Railroad Company covenants that out of the net earnings of the Danville and New River Narrow Gauge Railroad the holder of this certificate shall be entitled to receive a semi-annual Dividend of Three per centum in preference to all other stock, and any mortgage, deeds of trust and other liens or incumbrances whatsoever created after the 16th day of March, 1882."

With regard to this stock the following agreement has been filed with me:

"It is agreed between the parties that the Commissioner shall report as due the Town of Danville for dividends on her preferred stock the sum of fifty-four hundred dollars, subject to a credit of eighteen hundred dollars as of April 23, 1886, with interest on $1,800—part of said $5,400, from July 23d, 1886, and on $1,800, other part thereof, from August 23d,

1886, to be paid *in preference* to the 2nd and 3rd division bonds and interest."

2nd. UNSECURED INDEBTEDNESS.

Exhibit "Griggs No. 2," filed with the deposition of G. K. Griggs, returned herewith, presents a detailed statement of the unsecured indebtedness of the road; for what purposes it was contracted and to whom the same is due. At the date of the appointment of the Receiver its total amount was $25,439.05. Since that date the Receiver has, by consent of all parties to the suit, paid the sum of $17,669.65, leaving $7,769.40 due and unpaid. The order of reference in this case does not call for the expression of any conclusion on the part of your Commissioner, but it may be well to state that of this amount $5,146.66 is for items, viz: Balance due on two passenger coaches, $3,580, and balance due on purchase of lands, $1,566.66, which are clearly subject to the lien of the mortgages. The balance is composed mainly of claims for salaries as president of the company and for services of minor employees of the company. Counsel insist that the president's salary is a preferred claim, taking precedence, under the decisions of the Supreme Court of the United States, of the mortgage bonds and other securities. The claims of the minor employees of the company are cases of real hardship. Mr. Griggs, the Secretary and Treasurer, was also purchasing agent, paymaster and superintendent of transportation. Mr. Stallard, the Auditor, was also the telegraph operator and train dispatcher. Mr. Oaks was the road master, contracting for and receiving all fuel for engines and supervising repairs to bridges and trestles. These employees on this little road thus each playing many parts. They are all poor men, but when the road went into the hands of the receiver they declined to press their claims, that those of the day laborers might be paid.

3rd. THE PROPERTY OF THE COMPANY TO WHICH THESE LIENS ATTACH.

This is all set forth in detail by the receiver in statements "A," "B" and "C," filed in the papers of the cause. State-

ment "A" is a complete list of all the engines, cars, machinery, tools and stock on hand.

Statement "B" shows the mileage of main line, terminals and sidings, turn tables, water tanks, section houses, bridges, trestles and timber on hand.

Statement "C" is an inventory of depot buildings and equipments, telegraph line and instruments, real estate and right of way. These statements are made out with the clearness and fullness characteristic of all the work of the receiver, and I do not suppose it necessary to give their details more fully here.

I have carefully examined the accounts of receipts and disbursements of the receiver up to July 1st, 1887, and find every item supported by proper vouchers. The books of his office are admirably kept, and all his transactions are set forth with great care and fullness.

All of which is respectfully submitted,

M. F. PLEASANTS,

Special Commissioner.

4. FINAL DECREE.

FILED AND ENTERED MARCH 29TH, 1888.

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE

WESTERN DISTRICT OF VIRGINIA,

AT LYNCHBURG, VIRGINIA, MARCH 29TH, 1888.

J. WILLCOX BROWN & OTHERS, PLAINTIFFS,

vs.

THE DANVILLE AND NEW RIVER RAILROAD COMPANY AND OTHERS, DEFENDANTS.

IN CHANCERY.

This cause came on to be further heard at this term upon the pleadings, and upon the evidence and papers and Master's reports heretofore filed therein, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

1. That the reports heretofore made and filed in this cause by the Master, be and the same are hereby confirmed, except as overruled or modified by this decree, and that the allegations and averments in the Complainants' Bill of Complaint, so far as they are material to the relief prayed for, are true.

2. That the mortgage or Deed of Trust executed by the Danville & New River Railroad Company to George D.

Gravely and Berryman Green, of the State of Virginia, Trustees, and dated the 1st day of July, 1881, and of which the copy filed with the Bill of Complaint and marked Complainants' Exhibit C, is a true copy, to which reference is had, is a valid conveyance of so much of the railroad, franchises and property of the said corporation as is therein mentioned, for the security of the mortgage bonds therein set forth; that the said bonds were duly issued, and the same and the proceeds thereof lawfully disposed of, and that the said Deed of Trust vested in the said Trustees for the purposes therein mentioned, and according to the tenor thereof, a good and valid title to all and singular the property and franchises therein described.

3. That the franchises and property conveyed by the said Deed of Trust of July 1st, 1881, to the said Trustees by the said Danville & New River Railroad Company, described as near as may be, are as follows, that is to say: all the right, title and interest of the said Danville & New River Railroad Company to the road-bed, rights, liberties, privileges, corporate franchises, real and personal property, of that portion of the railroad of the said company situate between Dundee in the town of North Danville, County of Pittsylvania, and State of Virginia, and Martinsville, in the County of Henry in the same State, known as the Eastern division of the said railroad, including herein all contracts of said company with other companies or corporations and all rights and remedies under and by reason of the same.

This description is intended to include the rolling stock and other movable property of the mortgagor company as is not attached to the said Eastern Division, but is held by the company as a whole in proportion to the mileage of the respective divisions. It being hereby adjudged, ordered and decreed that this is an equitable division of the said property which is so held in common by the company.

4. That there was a default on the part of the said Danville and New River Railroad Company in the payment of the instalment of interest upon the said bonds, issued under the said Deed of Trust on the Eastern division aforesaid on the 1st day of January, 1887, and that since that date no interest has been paid. That the amount of principal which has be-

come due and remains due and payable, is at the date of this decree the sum of two hundred thousand dollars.

This Court further finds that the interest on the accrued coupons of the said bonds remains wholly unpaid.

5. That the mortgage or Deed of Trust executed by the Danville & New River Railroad Company to George D. Gravely and Berryman Green, of the State of Virginia, Trustees, and dated the 15th day of September, 1883, and of which the copy filed with the Bill of Complaint and marked Complainants' Exhibit D, is a true copy, to which reference is had is a valid conveyance of so much of the railroad franchises and property of the said corporation as is therein mentioned, for the security of the mortgage bonds therein set forth; that the said bonds were duly issued, and the same and the proceeds thereof lawfully disposed of, and that the said Deed of Trust vested in the said Trustees for the purposes therein mentioned, and according to the tenor thereof, a good and valid title to all and singular the property and franchises therein described.

6. That the franchises and property conveyed by the said Deed of Trust of September 15th, 1883, to the said Trustees by the said Danville & New River Railroad Company, described as near as may be, are as follows, that is to say: All the right, title and interest of the said Danville & New River Railroad Company to the road-bed, rights, liberties, privileges, corporate franchises, rolling stock, real and personal property, of that division of the railroad of the said company, situate between the junction of that branch of said railroad leading to Martinsville and the main track of said railroad, about one-quarter of a mile East of Martinsville aforesaid, in the County of Henry and State of Virginia, and Patrick court-house in Patrick County in the same State, known as the Middle division of the Danville & New River Narrow Gauge Railroad, including herein all the contracts of said company whatsoever with other companies or corporations and all the rights and remedies under and by reason of the same.

This description is intended to include so much of the rolling stock and other movable property of the mortgagor company as is not attached to the said Middle division, but is

held by the company as a whole, in proportion to the mileage of the respective divisions. It being hereby adjudged, ordered and decreed that this is an equitable division of the said property which is so held in common by the company. In addition to the foregoing the said Deed of Trust on the Middle division conveys also all the road-bed, rights, liberties, privileges, corporate franchises, rolling stock and real and personal property of that division of the railroad of the said company, situate between Dundee in the town of North Danville, County of Pittsylvania, and State of Virginia, and Martinsville in the County of Henry in the same State, known as the Eastern division of the Danville & New River Narrow Gauge Railroad; this last subject, however, to the amount due and unpaid and secured by the prior mortgage or Deed of Trust on the said Eastern division.

7. That there was a default on the part of the said Danville and New River Railroad Company, in the payment of the instalment of interest upon the said bonds, issued under the said Deed of Trust on the Middle division aforesaid on the 1st day of November, 1886, and that since that date no interest has been paid. That the amount of the principal, which is due and payable is the sum of two hundred and fifty thousand dollars.

This Court further finds that the interest on the accrued coupons of the said bonds remains wholly unpaid.

8. That the mortgage or Deed of Trust executed by the Danville and New River Railroad Company to George D. Gravely and Berryman Green, of the State of Virginia, Trustees, and dated the 15th day of February, 1884, and of which the copy filed with the Bill of Complaint and marked Complainants' Exhibit E, is a true copy, to which reference is had, is a valid conveyance of so much of the railroad, franchises and property of the said corporation as is therein mentioned, for the security of the mortgage bonds therein set forth; that the said bonds were duly issued, and the same and the proceeds thereof lawfully disposed of, and that the said Deed of Trust vested in the said Trustees for the purposes therein mentioned, and according to the tenor thereof, a good and valid title to all and singular the property and franchises therein described.

9. That the franchises and property conveyed by the said Deed of Trust of February 15th, 1884, to the said Trustees by the said Danville and New River Railroad Company, described as near as may be are as follows: that is to say, all the right, title, and interest of the said Danville and New River Railroad Company to the road-bed, rights, liberties, privileges, corporate franchises, real and personal property and rolling stock of that division of the Railroad of the said Danville and New River Railroad Company between Patrick court-house and the Western Terminus of the said road to be known as the Western Division of the said road; and also all the road-bed, rights, liberties, privileges, corporate franchises, rolling stock and real and personal property of the Eastern and Middle divisions of the said Railroad, the lien on the said Eastern and Middle divisions however to be subject to the mortgages or Deeds of Trust of July 1st, 1881, and of September 15th, 1883, hereinbefore referred to.

10. That there was a default on the part of the said Danville and New River River Railroad Company in the payment of the instalments of interest upon the said bonds, issued under the said Deed of Trust on the Western division aforesaid on the 15th of August, 1886, and that since the last named date no interest has been paid. That the amount of the principal which is also due and payable is the sum of two hundred and fifty thousand dollars.

This Court further finds that the interest on the accrued coupons of the said bonds remains wholly unpaid.

11. That the liens and the order thereof in respect to their priority on the mortgage premises are as follows, viz:

1st. The mortgage or Deed of Trust, dated July 1st, 1881, which is a first lien on that portion of the defendant's the Danville and New River Railroad Company's property, which lies between Dundee and Martinsville and the personal property attached thereto, and on the rolling stock and movable property of the road which is common to all of the divisions in the proportion of the mileage of the respective divisions.

2nd. The mortgage or Deed of Trust, dated September 15th, 1883, which is a first lien on that portion of the defendant's, the Danville and New River Railroad Company's property, which lies between the junction of that branch of the road

leading to Martinsville and the main track of the said railroad one-quarter of a mile East of Martinsville and Patrick court-house, and on the personal property attached thereto, and on the rolling stock and movable property of the road which is common to all of the divisions in the proportion of the mileage of the respective divisions, and is a second lien upon all the property of the road appertaining to the Eastern division thereof.

3rd. The mortgage or Deed of Trust, dated February 15th, 1884, which is a lien upon the entire property of the road subject however to the mortgages or Deeds of Trust of July 1st, 1881, and of September 15th, 1883.

12. That the defendant, the Danville and New River Railroad Company or the defendant the town of Danville pay into the registry of this Court on or before the 16th day of April, 1888, the amounts due by the said Company, the Danville and New River Railroad Company, to the complainants, under the three several Deeds of Trust, together with the costs in this cause and such claims as may be adjudged to be due, and to be a charge upon the property in the hands of the receiver or be forever barred and foreclosed.

13. That all and singular the property and franchises of every description belonging to the said defendant Company, the Danville and New River Railroad Company, be sold at public auction by Berryman Green, who is hereby appointed a special Commissioner to make the said sale (unless payment be made by the said Danville and New River Railroad Company or by the town of Danville, of the amounts as hereinbefore provided to be paid under the 12th clause of this decree,) as the same may exist at the time of sale, subject only to any contracts, including any unpaid receiver's certificates, made by the receiver under the authority of the Court, and any claims which may have been declared by the Court to have precedence to the mortgage debt, all of which charges must be publicly announced by the Commissioner at the time of sale; and also subject to any liability that may hereafter be established against the receiver growing out of any lawful acts done by him in his capacity as receiver.

Such sale (unless stayed by such payment as is hereinbefore provided for) shall be made at some convenient time and

place in the town of Danville to be designated by the said Commissioner, not however before the 2d day of July, 1888. The Commissioner shall give notice of the time and place of sale by an advertisement thereof, to be inserted once in each week for not less than sixty days before the sale in some one or more newspapers published in the town of Martinsville and Danville and the City of Richmond.

The Commissioner shall sell the premises herein directed to be sold to the highest and best bidder, who shall pay in cash the sum of Twenty-five thousand dollars and the balance of the purchase money within thirty days. After the payment by the purchaser of the above sum and such further sum in cash as the Court may direct, the purchaser may, in payment of the residue of the purchase money, pay the bonds and the past due coupons of the several divisions in the order in which they are hereinbefore declared to attach as liens on the said divisions, at such rate per centum of the par value thereof as the bondholders would be entitled to be paid in cash in respect thereof out of the net proceeds of the sale on distribution thereof among the holders of such bonds and coupons, the mode of making such payment in bonds and coupons to be determined hereafter by the Court in the decree confirming said sale, and the percentage so applied in satisfaction of the purchase money shall be treated as a payment of such bonds and coupons to the extent of such application.

In case of the failure of any bidder to comply with the terms of sale that are to be complied with on the day of sale, and before a final adjudication to the bidder, the Commissioner may reject the bid, and proceed at once, then and there, to make a resale, or he may, then and there, publicly announce that on some other day, to be then designated and between certain hours of the day to be designated, he will, at the same place, make a sale of the premises under the decree without further advertisement, and he may make the same accordingly. And the Commissioner shall have power to adjourn the sale from time to time.

In case of any such adjournment or adjournments, public notice thereof shall be given by publishing a note to the advertisement of sale to that effect.

14. That the Commissioner report the sale and proceedings under this decree to this Court with all convenient speed, and give notice thereof to the complainants' solicitors, and the complainants' solicitors may present the said report to this Court on thirty days' notice to the purchaser and the defendants' solicitors. If on presentation and consideration of the said report of sale, which shall be at a stated or special term, sitting in open Term, the Court shall confirm the sale, the complainants' solicitor must forthwith prepare and submit to the Court a draft deed of conveyance from the Commissioner to the purchaser; and upon the settlement of the form thereof, and upon due compliance with the terms of sale by the purchaser, the Commissioner must execute and deliver such deed of conveyance to the purchaser, and the purchaser, or his successor or successors in interest, will then and thereupon be let into possession of the premises. By the sale and conveyance to be made as aforesaid of the property and franchises hereinbefore decreed to be sold by said Commissioner, the defendants in this action, and each and every of them, and all persons claiming under them, or any of them, subsequently to the commencement of this action, shall be absolutely and forever barred and foreclosed of and from all estate, right, lien, claim and equity of redemption of, in or to, or in respect of, said property and franchises so sold and conveyed, and each and every part thereof.

15. That the receiver remain in possession of the mortgaged premises, and continue to operate the line of railroad after the sale, and until the conveyance thereof. He will keep a correct account of the earnings and income of the premises accruing after the date of sale, and if the sale should be confirmed, the purchaser, on delivery of possession by the receiver, will be entitled to receive the net income and earnings accruing subsequent to the date of sale, and the proceeds of such income and earnings.

16. That the Commissioner deposit all moneys coming into his hands under this decree, immediately upon the receipt thereof, in the People's National Bank of Lynchburg, to the credit of this cause, to be paid out only in pursuance of the order of this Court.

If the sale shall not be confirmed by the Court, the amount of purchase money paid by the purchaser to be refunded without deduction, unless the non-confirmation thereof shall be due to the fault of the purchaser, in which event such terms will be imposed as the Court may think just and proper.

And the defendant, the Town of Danville, prays an appeal from the aforesaid decree in open Court, and it is allowed, and if a supersedeas is desired the amount of the Bond is fixed at One hundred thousand dollars.

HUGH L. BOND,
Circuit Judge.

5. APPEAL BOND.

FILED JUNE 1ST, 1888.

SUPREME COURT OF THE UNITED STATES.

J. WILLCOX BROWN AND ALS

vs.

THE DANVILLE & NEW RIVER RAILROAD AND ALS.

Know all men by these presents, that we, the Town of Danville, principal, and W. T. Sutherlin, W. N. Shelton, W. F. Cheek, J. G. Penn and F. X. Burton, sureties, all of the State of Virginia, are held and firmly bound unto J. Willcox Brown, Charles D. Lowndes, and Frank T. Redwood, partners, under the firm name of Brown & Lowndes, Basil Gordon, George C. Jenkins, Joseph W. Jenkins, Jr., and Michael Jenkins, the last three partners under the firm name of Jenkins Brothers, T. Nelson Strother, Joseph W. Jenkins, Sr., John A. Tompkins, Edward B. Bruce, Frank P. Clark, Charles D. Fisher, Ivan M. Proctor, Graham Gordon, Frederick Von Verser, Edward Worthington, Robert Hodges, George H. Courson, Henry B. Crane, Oliver Andrews, D'Coursey W. Thom, and Harry D. Whitely, the last two partners under the firm name of Thom & Whitely, in the just and full sum of one hundred thousand dollars, to be paid to the said J. Willcox Brown, Charles D. Lowndes, and Frank T. Redwood, partners under the firm and name of Brown & Lowndes, Basil Gordon, George C. Jenkins, Joseph W. Jenkins, Jr., and Michael Jenkins, the last three partners as Jenkins Brothers, T. Nelson Strother, Joseph W. Jenkins, Sr., John A. Tompkins, Edward B. Bruce, Frank P. Clark, Charles D. Fisher, Ivan M. Proctor, Graham Gordon, Frederick Von Verser, Edward Worthington, Robert Hodges, George H. Courson, Henry R. Crane, Oliver Andrews,

D'Coursey W. Thom, and Harry B. Whitely, the last two partners as Thom & Whitely, their executors and administrators, to which payment well and truly to be made, we bind ourselves, and each of us jointly and severally, and our, and each of our heirs, executors and administrators firmly by these presents.

In witness whereof the Town of Danville has caused its corporate seal to be affixed hereto, and these presents to be subscribed by the President of Council of the Town of Danville and the sureties hereinbefore named have hereunto set their hands and seals this the twenty-ninth day of May, 1888.

WHEREAS, The above named, the Town of Danville, hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled cause by the Circuit Court of the United States for the Western District of Virginia, at Lynchburg, Va. Now, therefore, the condition of this obligation is such that if the above named Town of Danville shall prosecute said appeal to effect, and answer all cost and damages, if it shall fail to make good its plea, then the obligation to be void, otherwise to remain in full force and virtue.

E. G. MOSELEY,
President Town Council, Danville, Va.
W. T. SUTHERLIN, [*seal.*]
W. N. SHELTON, [*seal.*]
W. F. CHEEK, [*seal.*]
JAMES G. PENN, [*seal.*]
F. X. BURTON, [*seal.*]

STATE OF VIRGINIA, TOWN OF DANVILLE, to wit:

I, John A. Smith, a Justice of the Peace in and for the State and Town aforesaid, do certify that each of the parties whose names are signed to the foregoing obligation have acknowledged the same before me in my corporation aforesaid, and I do further certify that they, the said sureties, have each made oath, before me in my corporation aforesaid, this day, that he is worth the sum of one hundred thousand dollars. Witness my hand this 29th day of May, 1888.

JNO. A. SMITH, *J. P.*

Indorsed: Bond approved,
HUGH L. BOND, *Cr. Judge.*

6. CITATION.

FILED JUNE 1ST, 1888.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF VIRGINIA. } *ss.*

In the clerk's office of the Circuit Court of the United States for the Western District of Virginia, at Lynchburg, on Friday, the 1st day of June, 1888.

The following order of citation. On appeal in the cause of

J. WILLCOX BROWN AND OTHERS

vs.

THE DANVILLE AND NEW RIVER RAILROAD COMPANY AND OTHERS,

Was this day received in said and entered of record to wit:

By the Honorable Hugh L. Bond, one of the Judges of the Circuit Court of the United States, for the Western District of Virginia.

To J. Willcox Brown, Charles D. Lowndes, and Frank T. Redwood, partners under the firm name of Brown and Lowndes, Basil Gordon, George C. Jenkins, Joseph W. Jenkins, Jr., and Michael Jenkins, the last three partners under the firm name of Jenkins Brothers, T. Nelson Strother, Joseph W. Jenkins, Sr., John A. Tomkins, Edward B. Bruce, Frank P. Clark, Charles D. Fisher, Ivan M. Proctor, Graham Gordon, Frederick Von Verser, Edward Worthington, Robert Hodges, George H. Courson, Henry B. Crane, Oliver Andrews, D'Coursey W. Thom, and Harry

D. Whitely, the last two partners under the firm name of Thom and Whitely.

WHEREAS, The Town of Danville has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the Circuit Court of the United States, for the Western District of Virginia, at Lynchburg, Virginia, made in favor of you, and has filed the security required by law, You are therefore hereby cited to appear before the said Supreme Court at the City of Washington, on the 2nd day of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the City of Lynchburg, in the 4th Circuit, on 31st day of May, in the year of our Lord 1888.

HUGH L. BOND,
Circuit Judge.

Test: WYATT M. ELLIOTT,
Clerk.

Return of Citation of Marshal

Will be found on p. 109 of the Record, and was made July 18th, 1888, and is in the usual form, and need not therefore be set out in full.

STATEMENT OF THE CASE.

The Bill of Complaint in this cause was filed on or about the 11th day of November, 1886. See *ante* p. 9.

The Town of Danville, the Appellant, answered on the 3rd day of January, 1887; *ante* p. 10.

The final decree, which is appealed from was entered on the 29th day of March, 1888, *ante* p. 18, the terms of which fix the amount of the bond "if a *supersedeas* is desired." See *ante* p. 26.

On the 1st day of June, 1888, the appeal bond was filed. See *ante* p. 27.

The appeal bond therefore was filed on the sixty-fifth day after the rendering of the decree.

BRIEF.

1. The bond was filed too late and the *supersedeas* must be vacated.

Revised Statutes, sec. 1007.

> "In any case where a writ of error may be a *super-*
> "*sedeas* the defendant may obtain such *supersedeas*,
> "by serving the writ of error, by lodging a copy
> "thereof for the adverse party in the Clerk's Office
> "where the record remains within sixty days, Sundays
> "exclusive, after the rendering of the judgment com-
> "plained of, and giving the security required by law

"on the issuing of the citation. But if he desires to "stay process on the judgment he may, having served "his writ of error as aforesaid, give the security re- "quired by law within sixty days after the rendition of "such judgment, or afterward with the permission of a "Justice or Judge of the Appellate Court."

U. S. vs. Hooe, 3 *Cranch*, 73. Also 2 *Stat.* 244, *sec.* 2, *Act of* 1803, re-enacted *sec.* 1,012, *Rev. St.*

A perfect analogy exists between appeals and writs of error, as to the time in which, and the Judge by whom, they may be granted.

Telegraph Company vs. Eyser, 19 *Wall.*, 419; *Board of Commissioners vs. Gorman*, *Idem*, 661; *Wurts vs. Hoogland*, 105 *U. S.*, *p.* 701; *Western Air Line Constr. Co. vs. McGillis*, 127 *U. S.*, 776.

The terms of the Statute must be strictly complied with.

Adams vs. Law, 16 *How.* 148.
Hudgkins vs. Kemp, 18 *How.* 535.
French vs. Shoemaker, 12 *Wall.* 100.
Bigler vs. Walker, 12 *Wall.* 149.

Under the law as it stood before the Acts of 1872 and 1875, it was held that an appeal to operate as a *supersedeas* must be perfected and the security given within ten days after the rendition of the decree.

Kitchen vs. Randolph, 93 *U. S.* 89.

"The allowance of the Appeal is the equivalent of the Writ of Error."

Idem, *p.* 89.

"The giving of the bond alone is made the condition "of the stay," and "*it must be* within sixty days after "the rendition of the judgment."

Sage vs. The Central R. R. Co., 3 *Otto*, 412.

Chief Justice Waite—

"A supersedeas is a statutory remedy. It is only "obtained by a strict compliance with the required

"conditions, none of which can be dispensed with. "(Cites *Hogan vs. Ross*, 11 *Howard*, 297; *Railroad Co.* "*vs. Harris*, 7 *Wall.* 575). Time is an essential ele- "ment in the proceeding, and one which neither the "Court nor the Judges can disregard. *If a delay be-* "*yond the limited time occurs, the right to the remedy is* "*gone, and the* successful party holds his judgment or "decree freed and discharged from this means of stay- "ing proceedings for its collection or enforcement."

Spear on the Law of the Federal Judiciary, page 308—

Concludes from the foregoing case and others of similar import that "the appeal must be perfected "within sixty days after the rendition of the judgment "or the passing the decree complained of, in order to "make the writ or the appeal a supersedeas, as a mat- "ter of right by giving the requisite security."

Idem, p. 565.

"The two conditions * * * of making a writ of error "operate as a supersedeas are the lodgment of a copy "of the writ for the adverse party in the Clerk's office, "and giving the required security, within sixty days "after the rendition of the judgment. * * * These "conditions *must* be supplied, or he cannot make the "writ of error operate as a supersedeas."

It would seem, therefore, that this Honorable Court must hold, and so declare, that the bond filed in this case was not filed in time and cannot operate as a supersedeas; and this brings us to consider—

2nd. Whether the case is such an one as appeals favorably to the discretion of the "designated Justice" whose province it will be to act upon the application, should one be made, for leave to withdraw the bond, now filed in the case, and to file a new bond, for the purpose of securing by supersedeas a stay of further "process on the decree."

The appellees most respectfully submit that the record discloses that the case is not one for a supersedeas at all, that

the pending appeal fully secures to the appellant all of its rights, that no possible advantage to it can be derived, directly or indirectly, immediately or remotely, from the supersedeas, that the effect of the supersedeas will be only to keep the property in the hands of the receiver to the detriment of all parties interested in it, and particularly to the holders of the junior bonds, and finally that this application for a supersedeas is but a vexatious proceeding intended to be used to force a compromise which the legal rights of the parties do not warrant.

This is a suit at the instance of mortgage bondholders seeking to subject the mortgaged property to the payment of their bonds, and they are the Appellees.

The Town of Danville, the Appellant, is a *preferred stockholder* and has no rights superior to the common stockholders, except that whenever there may be any *net earnings*, it is entitled to be paid its dividend at the rate of six per cent. per annum, *in preference* to the payment of the interest under the second and third mortgages.

It has no preference as to such dividends or in any other way over the 1st mortgage bondholders.

See answer of Town of Danville, *ante* p. 10.

> "The terms, conditions and covenants, upon which "this respondent took said stock in said road, were that "the Danville and New River Railroad Company would "and should pay to this respondent, upon said stock, a "semi-annual dividend of three per cent, out of the net "earnings of the road, in preference to all other stock, "and any mortgage, deeds of trust * * * *created* "*after* the 16*th March*, 1882," the first or Eastern Division Mortgage having been "created" the 1st July, 1881. See Final Decree, sec. 2, p. 19.

Therefore, whatever may be the object of the appeal (and it may be remarked that it is no where disclosed in the record, not even by an exception to the Commissioner's Report,) the Appellant can have no rights of any character superior to the first or Eastern mortgage bondholders.

Now what contest can it have with the second and third mortgage bondholders? Obviously none, except to have its claim to dividends made a continuing charge or lien upon the property, so that the purchaser at the sale provided for by the decree shall take subject thereto.

Does not the sale and purchase *subject to the pending appeal effectually secure this end?* And *must* not the sale under the decree be subject to all the rights of the Appellant, whatever they may hereafter be held to be?

As is the case in all railroad foreclosures, (a fact so common, universal, and well known, that this Honorable Court will take cognizance of it, though it does not appear, except by implication, in the record,) the purchasers of this property at the foreclosure sale *must* be the several classes of bondholders; and in this case they have combined for that purpose.

Having purchased the mortgage property, and be it remembered charged with whatever rights the Appellant may have, they would immediately reorganize it, look after its connections and physical condition, and make of it a successful and paying concern. They would largely enhance its value and, there is every reason to believe, put it in a condition that would enable it to properly perform its duties to the public and to earn the interest upon its bonded indebtedness.

But if by reason of a supersedeas the Court shall operate the road for three years to come, the earliest moment at which the appeal on its merits can be heard, the utmost that can be hoped for is that at the end of that time, it will be in no worse condition than now.

It will be further observed that it appears by the Master's Report, *ante* p. 15, that on the 23rd day of April, 1886, all that was due to the appellant was $5,400, subject to a credit of $1,800, or $3,600, and that amount the appellees are ready at any time to pay. Moreover it will appear by a reference to the Receiver's Reports, that no interest has been paid to any of the three classes of bondholders, or earned, since the property has been in the custody of the Court, but that the entire earnings have been needed to put the road in a fit condition for service. Therefore it follows that not a dollar, under any view of its rights, is at this time due to the appellant, except the $3,600 above mentioned, which they are

ready at any time to pay, nor can there, under any circumstances, at the end of three years be due to it more than 18 per cent. on $60,000, or $10,800.

Yet with so trifling an interest at stake the appellant would, through the instrumentality of this *supersedeas*, prevent the reorganization of the Company, suppress all efforts to better its physicial condition, and destroy all hope of the bondholders, for three years to come, of realizing a dollar in the way of interest on their mortgage debt.

Sec. 1,007 *Revised Statutes* invests the Court with discretion in the matter of such an application, and in *Sage vs. R. R. Co.*, 93 *U. S.* 417, the Court used the following language:

> "It is true that the Court may enter an order in a "cause *nunc pro tunc*, where the action asked for has "been delayed by or for the convenience of the Court, "but it is never done where the parties themselves "have been at fault, or where it will work injustice."

Citing—

Perry vs. Wilson, 7 *Mass.* 394.

Fishmongers' Co. vs. Robertson, 3 *Man. Gr. and S.* 974.

Therefore the appellees humbly submit that from the facts disclosed from the record in this case and from the terms of the Statute, and the numerous decisions of this Court interpreting it, it follows:

1st. That the bond which has been filed does not operate as a *supersedeas* because it was not filed in time, and

2nd. That inasmuch as the *supersedeas* cannot benefit the appellant in *any way*, and will in its effects be *most disastrous* to the appellees, the facts do not present a case that would support an appeal to the discretion of the Court under the terms of Sec. 1,007 of the Revised Statutes.

3rd. Therefore, the motion should be granted, and coupled with it an intimation that an application for a new supersedeas will not be entertained.

FRANK P. CLARK,
Attorney for Appellees.

NOTE.

The Appellant was duly notified that this motion would be filed, as will appear by reference to the said notice filed this day in this cause, and which is as follows:

RE: DANV. & NEW R. R.R. CO.

FRANK P. CLARK,
ATTORNEY AT LAW,
207 ST. PAUL ST.

BALTIMORE, *Oct.* 31, 1888.

THE TOWN OF DANVILLE	IN THE
vs.	SUPREME COURT
J. WILLCOX BROWN	OF THE
AND OTHERS.	UNITED STATES.

To

GEO. C. CABELL, ESQ., *Attorney for Town of Danville:*

Please take notice, that I shall, on the 12th day of November, 1888, move in this case for an order vacating the supersedeas, for the reason that the bond was not filed within the time prescribed by the Statute.

FRANK P. CLARK,
Attorney for
J. WILLCOX BROWN AND OTHERS,
Appellees.

Service of Copy admitted this
day of 1888.

WESTERN DISTRICT OF VIRGINIA,
DANVILLE.

H. R. Miller this day personally appeared before me, S. W. Martin, Clerk of the United States Circuit Court for the Western District of Virginia, at Danville, in my office, and made oath that on the 3rd day of November, 1888, he presented for acceptance the within notice to Geo. C. Cabell, Attorney for the town of Danville, that said Geo. C. Cabell declined to accept service of the same, and thereupon the said H. R. Miller delivered a true copy of the within notice to said Geo. C. Cabell, and then and there informed him that the delivery of such copy to him would be insisted upon as legal service of said notice.

H. R. MILLER.

Subscribed and sworn to before me this 7th day of November, 1888.

S. W. MARTIN,
Clerk U. S. Circuit Court.

SEAL
OF
CIRCUIT COURT.

In the Supreme Court of United States.

THE TOWN OF DANVILLE, VA., Appellant,
vs.
J. WILLCOX BROWN AND OTHERS, Appellees,
} No. 1109.

AFFIDAVIT AND EXHIBITS.

WARE, DUKE & TAYLOR, PRINTERS, 1208 MAIN STREET, RICHMOND.

WESTERN DISTRICT OF VIRGINIA,
DANVILLE.

H. R. Miller this day personally appeared before me, S. W. Martin, Clerk of the United States Circuit Court for the Western District of Virginia, at Danville, in my office, and made oath that on the 3rd day of November, 1888, he presented for acceptance the within notice to Geo. C. Cabell, Attorney for the town of Danville, that said Geo. C. Cabell declined to accept service of the same, and thereupon the said H. R. Miller delivered a true copy of the within notice to said Geo. C. Cabell, and then and there informed him that the delivery of such copy to him would be insisted upon as legal service of said notice.

H. R. MILLER.

Subscribed and sworn to before me this 7th day of November, 1888.

S. W. MARTIN,
Clerk U. S. Circuit Court.

SEAL
OF
CIRCUIT COURT.

In the Supreme Court of United States.

THE TOWN OF DANVILLE, VA., Appellant,
vs.
J. WILLCOX BROWN AND OTHERS, Appellees,
} No. 1109.

AFFIDAVIT AND EXHIBITS.

WARE, DUKE & TAYLOR, PRINTERS, 1208 MAIN STREET, RICHMOND.

THE TOWN OF DANVILLE, VA., Appellant,
vs.
J. WILLCOX BROWN AND OTHERS, Appellees,
No. 1109.

AFFIDAVIT AND EXHIBITS.

United States of America
vs.
Western District of Virginia.

Wm. T. Harris, a member of the law firm of Peatross & Harris, practitioners of the city of Danville, Va., came personally before me, Alfred C. Lewis, a commissioner of the Circuit Court of the United States for the Western District of Virginia, and made oath that on or about the —— day of May, 1888, his partner, R. W. Peatross, of counsel for the Town of Danville in the suit lately depending in the Circuit Court of the United States for the Western District of Virginia, held at Lynchburg, Va., wherein J. Willcox Brown and others were plaintiffs and the Danville and New River Railroad Company and others were defendants, applied in open court for an appeal to the Supreme Court of the United States, in behalf of the said town, from a decree rendered on the 29th day of March, 1888; that said appeal was allowed, and, as the record shows, the following order was entered: "And the defendant, the Town of Danville, prays an appeal from the aforesaid decree in open court, and it is allowed, and, if a *supersedeas* is desired, the amount of the bond is fixed at one hundred thousand dollars." A duly-certified copy of said transcript is here filed as

a part of this affidavit, marked "W." That the said Peatross returned to Danville, and prepared what he supposed to be a sufficient bond in the premises, procured the same to be signed or executed by a number of substantial citizens of said town, worth, as affiant believes, many times more than the sum of one hundred thousand dollars, and forwarded the same, on or about the 22d day of May, 1888, to the address of the Hon. Hugh L. Bond, the judge of said Circuit Court. The said original bond is here filed, marked "T," as a part of this affidavit. That on or about the 26th day of May, 1888, the law firm of Peatross & Harris received from said Judge Bond a letter dated the 25th day of May, 1888, returning said bond to said firm, and rejecting the same upon the ground that there were too many obligors to said bond, &c. Said letter is here filed, marked "H," as a part of this affidavit. That said Peatross, with the said affiant, then prepared another bond in the sum of $100,000, which he procured to be signed and executed by the president of the Town Council of Danville, in behalf of said town, W. T. Sutherlin, W. F. Cheek, W. N. Shelton, James G. Penn, and F. X. Burton, citizens of said town, sureties, each of whom, as affiant believes, was and is worth the sum of one hundred thousand dollars. This bond was executed, as shown upon its face, on the 26th day of May, 1888, and was at once forwarded to said Judge Bond. Said bond, as executed, is here filed, "J," as part of this affidavit. That a day or two thereafter the said bond was returned to affiant's said firm by the said judge, enclosed in a letter of date 26th May, 1886, with the objection that "the bond sent is irregular in that it is given to the United States, whereas it ought to be given to the complainants." Said letter is here filed, marked "K," as a part of this affidavit. That said Peatross and this affiant at once set to work to get up such bond as the said judge required, and payable as required, and signed by the said Moseley, as president of the Town Council of said town, and in behalf of said town, as principal, and W. T. Sutherlin, W. N. Shelton, W. F.

Cheek, James G. Penn, and F. X. Burton as sureties. That said bond was dated May 29th, 1888, acknowledged, and sworn to before a justice of the peace, and forwarded at once to the said Judge Bond, and this bond, affiant says, was accepted by the said judge as good and sufficient for the purposes in view, as appears by the endorsement of the said judge thereon—to-wit, "Bond approved.—Hugh L. Bond, C't Judge"; "Filed June 1st, 1888."—Signed "W. M. Elliott, clerk." A duly-certified copy of said bond, with the endorsements thereon, is here filed, marked "L," as part of this affidavit. That the clerk of said court, as affiant has reason to believe, had proper orders given him in the premises. That "citation" to the parties defendants in error were ordered to be made and served, and the record ordered to be copied and forwarded to the clerk of the Supreme Court of the United States at Washington, D. C., all of which, affiant presumes, was done. Said Peatross is absent from Danville at this time.

W. T. HARRIS.

Sworn to and subscribed before me, at Danville, Virginia, in my district aforesaid, this 10th day of November, 1888.

ALFRED C. LEWIS,
United States Commissioner,
Western District of Virginia.

EXHIBIT "W."

"And the defendant, the Town of Danville, prays an appeal from the aforesaid decree in open court, and it is allowed, and, if a *supersedeas* is desired, the amount of the bond is fixed at one hundred thousand dollars.'

United States of America,
Western District of Virginia:

I, Wyatt M. Elliott, clerk of the Circuit Court of the

United States for the Western District of Virginia, at Lynchburg, do hereby certify that the foregoing is a true copy of an endorsement on a final decree made in said court by Hon. Hugh L. Bond, circuit judge, on the 30th day of March, A. D. 1888, and filed and recorded in the clerk's office of said court on the same day in the following cause—to-wit: J. Willcox Brown and others *v.* The Danville and New River Railroad Co. and others.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at Lynchburg, this 19th day of June, A. D. 1888.

{SEAL} WYATT M. ELLIOTT, *Clerk.*

EXHIBIT "T."

Supreme Court of the United States.

J. Willcox Brown and *als.*
v.
The Danville and New River Railroad Co. and *als.*

Know all men by these presents that we, the Town of Danville, principal, and C. G. Holland, J. M. Neal, W. T. Sutherlin, John W. Holland, John M. Johnston, W. F. Cheek, E. H. Miller, F. X. Burton, J. B. Ley, W. W. New, T. J. Talbott, E. G. Moseley, J. E. Schoolfield, W. W. Worsham, W. W. Waddill, R. W. Peatross, P. R. Jones, B. S. Crews, F. B. Gravely, D. A. Overby, H. D. Guerrant, Charles Orchard, Geo. N. Wilson, P. C. Venable, H. A. Wiseman, H. W. Cole, B. F. Jefferson, E. K. Jones, J. H. Johnston, James G. Penn, John L. Penn, G. W. Swain, J. N. Wyllie, Albert Gerst, J. F. Rison, John R. Pace, Thomas McCully, T. B. Fitzgerald, J. H. Estes, Harry Wooding, M. P. Jordan, C. T. Brown, W. W. Brown, R. T. Bass, William Rison, J. D. Blair, and E. S. Arnett, sureties, all of the State of Virginia, are held and firmly

bound unto the United States of America, the Town of Danville, in the just and full sum of one hundred thousand dollars; the said C. G. Holland, F. X. Burton, E. H. Miller, W. F. Cheek, and James G. Penn each in the sum of five thousand dollars; John W. Holland and W. T. Sutherlin each in the sum of three thousand dollars; W. W. New, J. E. Schoolfield, W. W. Waddill, R. W. Peatross, P. R. Jones, H. A. Wiseman, John M. Johnston, John N. Wyllie, Albert Gerst, J. F. Rison, John R. Pace, T. B. Fitzgerald, and J. D. Blair each in the sum of twenty-five hundred dollars; J. M. Neal, J. B. Ley, B. S. Crews, F. B. Gravely, E. G. Moseley, D. A. Overby, Geo. N. Wilson, B. F. Jefferson, John L. Penn, J. S. Estes, and E. S. Arnett each in the sum of two thousand dollars; T. J. Talbott, W. W. Worsham, H. D. Guerrant, Charles Orchard, P. C. Venable, H. W. Cole, E. K. Jones, J. H. Johnston, G. W. Swain, Thomas McCully, Harry Wooding, M. P. Jordan, C. T. Brown, W. W. Brown, and R. T. Bass each in the sum of one thousand dollars, and William Rison in the sum of five hundred dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, and executors, &c., as hereinbefore set forth, firmly by these presents.

In witness whereof the Town of Danville hath caused its corporate seal to be affixed hereto, and these presents to be subscribed by the president of the Council, at the said town of Danville, and the sureties hereinbefore named have hereunto set their hands and seals this the nineteenth day of May, 1888.

Whereas the above-named the Town of Danville hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the Circuit Court of the United States for the Western District of Virginia, at Lynchburg, Va.; now, therefore, the condition of this obligation is such that if the above-named the Town of Danville shall prosecute said appeal to effect, and answer all cost and damages if it shall fail to make good its plea, then this

obligation to be void, otherwise to remain in full force and virtue.

{SEAL}

E. G. MOSELEY,
Pres't Town Council.

C. G. HOLLAND, [Seal.]
J. M. NEAL, [Seal.]
W. T. SUTHERLIN, [Seal.]
JOHN W. HOLLAND, [Seal.]
J. M. JOHNSTON, [Seal.]
WM. F. CHEEK, [Seal.]
E. H. MILLER, [Seal.]
F. X. BURTON, [Seal.]
JAS. B. LEY, [Seal.]
W. W. NEW, [Seal.]
T. J. TALBOTT, [Seal.]
E. G. MOSELEY, [Seal.]
J. E. SCHOOLFIELD, [Seal.]
WM. W. WORSHAM, [Seal.]
W. W. WADDILL, [Seal.]
E. K. JONES, [Seal.]
R. W. PEATROSS, [Seal.]
P. R. JONES, [Seal.]
B. S. CREWS, [Seal.]
F. B. GRAVELY, [Seal.]
D. A. OVERBY, [Seal.]
H. D. GUERRANT, [Seal.]
CHAS. ORCHARD, [Seal.]
GEO. N. WILSON, [Seal.]
PAUL C. VENABLE, [Seal.]
H. A. WISEMAN, [Seal.]
H. W. COLE, [Seal.]
B. F. JEFFERSON, [Seal.]
J. H. JOHNSTON, [Seal.]
JAMES G. PENN, [Seal.]
JNO. L. PENN, [Seal.]
GEO. W. SWAIN, [Seal.]
J. N. WYLLIE, [Seal.]
ALBERT GERST, [Seal.]

J. F. RISON,	[Seal.]
JNO. R. PACE,	[Seal.]
THOS. McCULLY,	[Seal.]
HARRY WOODING,	[Seal.]
T. B. FITZGERALD,	[Seal.]
C. T. BROWN,	[Seal.]
W. W. BROWN,	[Seal.]
J. HOWARD ESTES,	[Seal.]
R. T. BASS,	[Seal.]
M. P. JORDAN,	[Seal.]
WILLIAM RISON,	[Seal.]
J. D. BLAIR,	[Seal.]
E. S. ARNETT,	[Seal.]

EXHIBIT "W."

State of Virginia,
Town of Danville—to-wit:

I, John A. Smith, a justice of the peace in and for the State and town aforesaid, do certify that each of the parties whose name is signed as surety to the above obligation has acknowledged the same before me in my corporation aforesaid, and made oath that they are each respectively worth the amount for which they have severally obligated themselves in said bond, over and above their respective debts and obligations.

Given under my hand this the 22d day of May, 1888.

JNO. A. SMITH, *J. P.*

State of Virginia,
Town of Danville—to-wit:

I, William Rison, clerk of the Corporation Court of the town of Danville, in the State aforesaid, hereby certify that I am personally acquainted with each of the persons whose names are signed as sureties to the foregoing bond; that the records of my office show each re-

spectively to be worth more in property than he assures for, and has property unencumbered in said town of a value exceeding the respective amounts for which they severally enter as surety as aforesaid, and that the unencumbered property aforesaid collectively owned by them is of a value greatly in excess of one hundred thousand dollars.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 21st day of May, 1888.

{SEAL}

WILLIAM RISON, *Clerk*.

EXHIBIT "H."

BALTO., *May* 25, 1888.

Dear Sirs,—

I do not think I can accept a bond with nearly fifty names on it as a *supersedeas* bond in the New River road case. Let the Town of Danville give an indemnity bond to two or three persons of pecuniary responsibility, well known, and let them go on its bond. It does not seem just to stop a sale at the suggestion of these sureties when, if the appeal fails, it will be necessary to sue about fifty persons. Some of these will, it may be presumed, die before the appeal is determined, and it will take part of a lifetime to make parties to a suit on such a bond.

There is no reason for giving a *supersedeas* bond. The railroad cannot be taken away, and the purchaser at the sale will take the property with notice of the *lis pendens* of the Town of Danville. If its appeal is sustained, the decree will be reversed; if not, there will be nothing but costs to pay. A bond for $500 will do that.

I cannot approve a bond in this shape.

Yours truly,

HUGH L. BOND.

EXHIBIT "J."

Supreme Court of the United States.

J. Willcox Brown and *als.*
v.
The Danville and New River Railroad and *als.*

Know all men by these presents that we, the Town of Danville, principal, and W. T. Sutherlin, W. F. Cheek, W. N. Shelton, J. G. Penn, and F. X. Burton, sureties, all of the State of Virginia, are held and firmly bound unto the United States of America in the just and full sum of one hundred thousand dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

In witness whereof the Town of Danville has caused its corporate seal to be affixed hereto, and these presents to be subscribed by the president of the Council of the town of Danville, and the sureties hereinbefore named have hereunto set their hands and seals this the twenty-sixth day of May, 1888.

Whereas the above-named the Town of Danville hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the Circuit Court of the United States for the Western District of Virginia, at Lynchburg, Va.; now, therefore, the condition of this obligation is such that if the above-named the Town of Danville shall prosecute said appeal to effect, and answer all cost and damages if it shall fail to make good its plea, then the obligation to be void, otherwise to remain in full force and virtue.

{SEAL}

E. G. MOSELEY,
Pres't Town Council of Danville, Va.
W. T. SUTHERLIN, [Seal.]
W. F. CHEEK, [Seal.]
W. N. SHELTON, [Seal.]
JAMES G. PENN, [Seal.]
F. X. BURTON, [Seal.]

State of Virginia,
Town of Danville—to-wit:

I, John A. Smith, a justice of the peace in and for the said State and town aforesaid, do certify that each of the parties whose names are signed as sureties to the foregoing obligation have acknowledged the same before me in my corporation aforesaid.

Witness my hand this the twenty-sixth day of May, 1888.

JNO. A. SMITH, *J. P.*

EXHIBIT "K."

BALTO., *May* 26, 1888.

Dear Sirs,—

The bond sent is irregular in that it is given to the United States, whereas it ought to be given to the compl'ts. (12 Wall., 142.) Make the parties to it qualify, and send it to me at once with a stamp for immediate delivery. I see nothing else at present.

Yours truly,

HUGH L. BOND.

EXHIBIT "L."

Supreme Court of the United States.

J. Willcox Brown and *als.*
v.
The Danville and New River Railroad and *als.*

Know all men by these presents that we, the Town of Danville, principal, and W. T. Sutherlin, W. N. Shelton, W. F. Cheek, J. G. Penn, and F. X. Burton, sureties, all of the State of Virginia, are held and firmly bound unto J. Willcox Brown, Charles D. Lowndes, and Frank T. Redwood, partners under the firm-name of Brown &

Lowndes; Basil Gordon, George C. Jenkins, Joseph W. Jenkins, Jr., and Michael Jenkins, the last three partners under the firm-name of Jenkins Brothers; T. Nelson Strother, Joseph W. Jenkins, Sr., John A. Tompkins, Edward B. Bruce, Frank P. Clark, Charles D. Fisher, Ivan M. Proctor, Graham Gordon, Frederick Von Verser, Edward Worthington, Robert Hodges, George H. Courson, Henry R. Crane, Olivier Andrews, D'Coursey Thom and Harry D. Whitely, the last two partners under the firm-name of Thom & Whitely, in the just and full sum of one hundred thousand dollars, to be paid to the said J. Willcox Brown, Charles D. Lowndes, and Frank T. Redwood, partners under the firm and name of Brown & Lowndes; Basil Gordon, Geo. C. Jenkins, Joseph W. Jenkins, Jr., and Michael Jenkins, the last three partners as Jenkins Brothers; T. Nelson Strother, Joseph W. Jenkins, Sr., John A. Tompkins, Edward B. Bruce, Frank P. Clark, Charles D. Fisher, Ivan M. Proctor, Graham Gordon, Frederick Von Verser, Edward Worthington, Robert Hodges, George H. Courson, Henry R. Crane, Olivier Andrews, D'Coursey Thom and Harry B. Whitely, the last two partners as Thom & Whitely, their executors and administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

In witness whereof the Town of Danville has caused its corporate seal to be affixed hereto and these presents to be subscribed by the president of Council of the town of Danville, and the sureties hereinbefore named have hereunto set their hands and seals this the twenty-ninth day of May, 1888.

Whereas the above-named the Town of Danville hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the Circuit Court of the United States for the Western District of Virginia, at Lynchburg, Va.; now, therefore, the condition of this obligation is such that if the above-named the Town of Danville shall prosecute

said appeal to effect, and answer all cost and damages if it shall fail to make good its plea, then the obligation to be void, otherwise to remain in full force and virtue.

{SEAL}

E. G. MOSELEY,
Pres't Town Council, Danville, Va.
W. T. SUTHERLIN, [Seal.]
W. N. SHELTON, [Seal.]
W. F. CHEEK, [Seal.]
JAMES G. PENN, [Seal.]
F. X. BURTON, [Seal.]

State of Virginia,
Town of Danville—to-wit:

I, John A. Smith, a justice of the peace in and for the State and town aforesaid, do certify that each of the parties whose names are signed to the foregoing obligation have acknowledged the same before me in my corporation aforesaid, and I do further certify that the said sureties have each made oath before me, in my corporation aforesaid, this day that he is worth the sum of one hundred thousand dollars.

Witness my hand this the 29th day of May, 1888.

JNO. A. SMITH, *J. P.*

[Endorsed.]

Bond approved.—HUGH L. BOND, C't Judge.
Filed June 1st, 1888.—W. M. ELLIOTT, Clerk.

A copy—Teste:

WYATT M. ELLIOTT, Clerk.

Seal of
U. S. Circuit Court.